Supreme Court, U.S.
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In the

Supreme Court of the United States

WILLIAM C. BOND,

Petitioner,

v.

KENNETH BLUM, SR., *ET AL.*,

Respondents.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. DOES A US DISTRICT JUDGE'S UNDISCLOSED *EXTRAJUDICIAL* CONTACT WITH A POTENTIAL MATERIAL WITNESS IN WHICH HE LEARNED UNDISCLOSED INFORMATION ABOUT PETITIONER BEFORE BEING ASSIGNED A CASE AND OTHER JUDICIAL DISABILITIES COUPLED WITH AN ATTORNEY'S INSTRUCTIONS TO A WITNESS NOT TO PRODUCE SUBPOENAED DOCUMENTS REQUIRE FED. R. CIV. P. 60(B) RELIEF?

II. SHOULD THIS COURT EXPAND UPON THEIR DIRECTIVES TO THE LOWER COURTS ISSUED IN HAINES V. KERNER, 404 U.S. 519, 92 S. CT. 594 (1972) WHEN IT COMES TO *PRO SE* LITIGANTS ATTACKING POLITICALLY SENSITIVE CASES IN THE CIVIL ARENA?

PARTIES TO THE PROCEEDINGS

This Petition arises out of two (2) Fourth Circuit appeals:

1. **Fourth Circuit case no. 07-1720:**

The Petitioner is:

William C. Bond.

The Respondents are:

Kenneth Blum, Sr.; Kenneth Blum, Jr.;
Dudley F.B. Hodgson;
McDaniel, Bennett & Griffin;
Adelberg, Rudow, Dorf, & Hendler, LLC;
& William Slavin.

2. **Fourth Circuit case no. 08-1171:**

The Petitioner is:

William C. Bond.

The Respondents are:

Kenneth Blum, Sr.; Erlene Blum; Alan S. Cohn;
Robin Cohn; Kenneth Blum, Jr.;
Dudley F.B. Hodgson; William Slavin;
William A. McDaniel; Caroline A. Griffin;
McDaniel, Bennett & Griffin; McDaniel & Griffin;
Paul A. Dorf;
Adelberg, Rudow, Dorf, & Hendler, LLC;
Gerard P. Martin;
Miriam Pessin; & Rent-A-Wreck of America, Inc.

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CITATIONS TO OPINIONS BELOW

The decisions and opinions below in appeal nos. 07-1720 & 08-1171 are: the United States Court of Appeals for the Fourth Circuit issued an unpublished Judgment and Opinion on September 19, 2008. (Petitioner's Appendix, A-1). (Hereinafter "A-1," etc.).

The Honorable Judge Marvin J. Garbis for the United States District Court for the District of Maryland, Northern Division issued Orders on July 26, 2007 (A-5); July 12, 2007 (A-8); May 7, 2007 (A-19); and May 1, 2007 (A-21).

The Honorable Judge J. Frederick Motz for the United States District Court for the District of Maryland, Northern Division issued Orders on January 17, 2008 (A-25); January 3, 2008 (A-26); and June 26, 2007 (A-27, A-34).

The Honorable Judge Marvin J. Garbis for the United States District Court for the District of Maryland, Northern Division issued Orders on April 24, 2003 (A-35, A-59) and April 23, 2004 (A-61).

The United States Court of Appeals for the Fourth Circuit issued a Judgment and Opinion on January 24, 2003 cited as Bond v. Blum, 317 F.3d 385 (4th Cir. 2003) (A-66); the Honorable Judge Marvin J. Garbis for the United States District Court for the District of Maryland, Northern Division issued a Memorandum and Order on February 6, 2002 (A-94), a Memorandum and Order on December 27, 2001 (A-105); and Oral Opinion in open court on November 20, 2001 (A-108).

JURISDICTIONAL STATEMENT

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1). The Judgment of the United States Court of Appeals for the Fourth Circuit, for which Petitioner seeks review, was entered on September 19, 2008. (A-1).

STATUTES INVOLVED

The statutes and rules involved in this case are 17 U.S.C. § 106, 17 U.S.C. § 107, 17 U.S.C. § 506, 18 U.S.C. § 1961, 18 U.S.C. § 1962, 18 U.S.C. § 1964, 18 U.S.C. § 2319, 28 U.S.C. § 455, Fed. R. Civ. P. 12, 56, 59 & 60.

INTRODUCTION

This is a Fed. R. Civ. P. 60(b) "Fraud Upon the Court" case. This case arises out of three Fourth Circuit appeals concerning the doctrines of 'Fraud Upon the Court,' 'Judicial Disability and Immunity,' the 'FOIA,' and the rights this Court has guaranteed '*pro se*' litigants. The cases which became appeal no. 07-1720 (hereinafter the Fed. R. Civ. P. 60(b) "Motions" case), appeal no. 08-1171 (hereinafter the Fed. R. Civ. P. 60(b) "Independent Action" case), and appeal no. 08-1320 (hereinafter the "FOIA" case) were initially heard by three separate justices before the US District Court for the District of Maryland. The US Court of Appeals for the Fourth Circuit first joined all three appeals, then severed the FOIA case from the other two.[1] Hereinafter, the respondents in

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[1] Petitioner, after being denied by this Court his MOTION TO CHIEF JUSTICE JOHN G. ROBERTS TO GRANT LEAVE TO FILE A PETITION FOR WRIT OF CERTIORARI IN EXCESS OF THE WORD LIMITS on December 4, 2008, has decided to file his Petition in the FOIA case separately with

the two FRCP 60(b) cases will be referred to as "the Blum Respondents" or the specific individual or entity; and the respondents in the FOIA case will be referred to as the "Government" or the specific entity. Petitioner proceeds *pro se* in this case out of necessity because of the unpopular and unusual nature of this action in Maryland.

STATEMENT OF THE CASE[2]

Petitioner is the author of the unpublished copyrighted manuscript *Self-Portrait of a Patricide: How it feels to get away with Murder.*[3]

Petitioner, through counsel, filed an action for copyright infringement (hereinafter the "Copyright Case") in 2001 concerning the Blum Respondents theft of his unpublished manuscripts[4] from the law

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this Court. Petitioner will be asking by Motion that both of these Petitions be considered together.

[2] The Introduction, Statement of the Case, and Conclusion in the FOIA Petition and those in this FRCP 60(b) Petition are nearly identical, as they arise out of the same facts and circumstances.

[3] Both the Blum Respondents' and Petitioner's former counsel below have misidentified the title of this manuscript in numerous court filings. Further, the manuscript had many different titles and variations over the eight-plus years of its development. The above title was crafted by Petitioner's literary agent in anticipation of publishment in 1994. In 2001, the stolen manuscripts in question comprised one of only two known copies in existence.

[4] The Blum Respondents stole other papers as well. The main manuscript presented by the Blum Respondents to the District Court in 2001 contained several different parts of different versions of the manuscript, including two 'conclusion' chapters. 'Their' manuscript also did not have several parts added by Petitioner at later dates. By no means was this a finished or definitive work.

offices of his deceased attorney for use in both a collateral child custody case and a collateral criminal prosecution of Petitioner in Maryland. Jurisdiction of the United States District Court for the District of Maryland was invoked pursuant to 28 U.S.C. § 1338(a). The District Court ignored all evidence of the theft of the manuscript, ruling that the use of even an entire unpublished manuscript in a child custody proceeding was 'fair use' under 17 U.S.C. § 107. (A-108). The District Court then awarded attorneys's fees to the individual Blum Respondents in the amount of $28,726.05 plus interest. (A-94). The US Court of Appeals for the Fourth Circuit affirmed the District Court's decision and, in their Opinion, allowed the Blum Respondent law firms attorney's fees in regard to their *pro se* representation of their own firms. (A-87). On remand, the District Court awarded the law firms $153,018.09 plus interest. (A-35, A-59). This Court denied certiorari. See, Bond v. Blum, 317 F.3d 385 (4th Cir. 2003), cert. denied, 540 U.S. 820 (2003). (A-66).

At the suggestion of the District and Fourth Circuit Courts (A-98, A-81), Petitioner then sued the Blum Respondents and their accomplices in three Maryland state tort actions for, among other things, conversion and invasion of privacy in regard to the stolen manuscripts. The Blum Respondents and their accomplices countered by actively urging the Maryland local and appellate Courts to take Judicial Notice of the Opinions by the District and Fourth Circuit Courts in regard to the manuscript theft and privacy issues, which the Maryland Courts, in fact,

used as justification to dismiss those claims.[5] (A-110, A-73). The main Maryland state tort action against these same Blum Respondents was denied *certiorari* by the Maryland Court of Appeals in late 2006.

In June 2004, at the invitation of the US Attorney for the District of Maryland, Thomas M. DiBiagio, Petitioner made a criminal referral to the US Attorney for the District of Maryland about the crimes he alleges here in this Petition. Petitioner met with and supplied the Chief, Criminal Division, US Attorney for the District of Maryland information to support his allegations multiple times. Petitioner was led to believe that the US Attorney was going to prosecute his allegations. Then, once Mr. DiBiagio was forced out as US Attorney as part of the now famous DOJ shakeup and after a ten-month-long investigation, Petitioner's referral was declined out of "discretion" in May 2005, then redeclined after a new look at the case by the new US Attorney for the District of Maryland, Rod J. Rosenstein, in October 2006.

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[5] Petitioner did obtain a settlement from Blum Respondent accomplice Robert N. Grossbart, Esq., in regard to his legal malpractice committed against Petitioner. Grossbart was Petitioner's former attorney and accountant and advised the Blum Respondents on Petitioner, his manuscripts, and where and how to go get them. This information, and much more, was hidden from the District Court in 2001. All the information Petitioner has on the misdeeds of the Blum Respondents comes from the discovery in Grossbart which was narrow and limited to the issues in that case.

Petitioner's lawsuit against the wife of his deceased attorney who originally converted Petitioner's manuscripts from the offices of her deceased husband's law firm and who then gave it to Respondent Hodgson is still pending in the Maryland Court of Special Appeals.

On April 26, 2007, Petitioner filed, *pro se*, his Fed. R. Civ. P. 60(b) Motions case in the Maryland District Court questioning whether a United States District Judge should grant recusal or the vacatur of his underlying Copyright Case Judgment when it was discovered that he had repeatedly concealed *extrajudicial* knowledge of Petitioner from Petitioner and his Attorney below, and whether the same United States District Judge may remain the fact finder in a post Judgment action when his conflicts included: that his college 'roommate' and good friend was sued by Petitioner and that the 'roommate' and friend was to be a witness in the underlying case; that Petitioner made criminal and ethical complaints about the Judge and the friend; that the post judgment action concerned, as a primary fact, the Judge's own actions; that Petitioner made criminal and ethical complaints about one of the attorneys in the underlying case who was once law partners with the Judge; that Petitioner had sued under the FOIA the US Attorney for Maryland and the US District Court for Maryland for, among other things, information about Petitioner's criminal referral about the Judge's actions and for the Judge's telephone records in question; and whether the Judge may continue to stay in the case when his current 'best friend' and golfing buddy, whom the Judge also collaborated with on books, is representing the primary witness in the underlying case, Respondent Miriam Pessin, and who has used the Judge's underlying Opinion to defend Respondent Pessin in the Maryland state tort action against her? Finally, during the recent appeal of these matters to the Fourth Circuit, Petitioner also questioned whether the Judge's discretion was

further imperiled when it was suddenly discovered that, in addition to all the above, he belonged to a small, private, and exclusive law club with not only several of the Blum Respondent's attorneys, but also several of the actual Blum Respondents themselves and/or law firm partners of the Blum Respondent law firms, as well as the attorney representing Respondent Pessin, who, again, just happens to be the subject Judge's current 'best friend?'

Petitioner questioned whether the Defendants, Witnesses, Other Persons, and Attorneys in the underlying Copyright Case may commit perjury, suborn perjury, obstruct justice, and commit other crimes to win the Copyright Case with the intention of using the literary works at issue to take the minor children in the collateral custody case away from the mother who raised them their entire lives so that a pathologically obsessed grandfather, a la` the movie *Chinatown*, and his lackey former son-in-law, himself a habitual crack cocaine addict, may acquire custody of said children and, in the process, have the State of Maryland, in a second collateral case, convict and imprison Petitioner for ten years for the act of possessing handguns in a locked safe?[6]

Petitioner also questioned whether these same Defendants, Witnesses, Other Persons, and Attorneys may use their illegally gained Judgments and Orders to win collateral Maryland state tort

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[6] The criminal case against Petitioner, which he defeated, was premised upon the notion that a juvenile commitment to a mental hospital made him ineligible to possess handguns, even though the State of Maryland had given Petitioner a 'concealed carry permit' to possess such weapons and the Ohio law under which he was adjudicated offered "no civil disability" for delinquency.

cases, using the underlying District and Fourth Circuit Judgments, as *Res Judicata*, Estoppel, Issue Preclusion, or Judicial Notice, and thus, making the District and Fourth Circuit Courts co-conspirators to their racketeering?

On May 4, 2007, Petitioner filed, *pro se*, a FOIA lawsuit against the United States Attorney for the District of Maryland and the United States District Court for the District of Maryland asking for all information regarding Petitioner's criminal referral in 2004-6, the underlying Copyright Case District Court Judge's telephone records, and the "attorney disqualification motions" in the 'Bromwell Case' regarding Respondent Gerard P. Martin, Esq., one of the Blum Respondents' lawyers in the case below and this present case, a former law partner of the Judge in question, and the 'architect' of the "Fraud Upon the Court" alleged by Petitioner.[7]

On May 24, 2007, Petitioner also filed, *pro se*, a Fed. R. Civ. P. Rule 60(b) Independent Action seeking monetary damages and alleging racketeering by the Blum Respondents, using these same underlying facts as presented here in this Petition. Although Petitioner asked the District Court to Join this Action with his other FRCP Rule

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[7] That the US Attorney for Maryland sought fit to ask for and be granted the disqualification of Gerard P. Martin, Esq., as counsel in the biggest political corruption prosecution in Maryland by the Government in twenty years was what led Petitioner to believe that he finally had a chance to over come the complete character assassination perpetrated upon him by the Blum Respondents and the Court. It should be noted that Mr. Martin was the Chairman of the Maryland State Bar Association's Standing Committee on Ethics during the operative times of Petitioner's allegations.

60(b) Action, the Court did not. In fact, as stated before, all three of Petitioner's cases were assigned to different United States District Court judges, which caused Petitioner to complain later to the Fourth Circuit that his litigations were treated as if a "tag-team wrestling match."

The Maryland District Court ruled first on the FRCP 60(b) Independent Action case, dismissing the case before summonses were issued, and while claiming Petitioner "failed to state a claim upon which relief could be granted" (A-34), the Court went outside the record and, literally, reading from the earlier Fourth Circuit Opinion of 2003, stated that the Courts had already considered these issues and that Petitioner's claims were barred by *res judicata*, etc., despite the fact that Petitioner's allegations of "Fraud Upon the Court" were never raised below. (A-27). Petitioner countered with two FRCP 59 Motions, claiming that the Court had converted the dismissal to one under FRCP 56 and that the Court had taken the actual place of the Defendants who were not even served, which were denied. (A-26, A-25).

Then the original, and subject, District Court Judge in the underlying Copyright Case dismissed the FRCP 60(b) Motions case, now citing the above order by his brother Judge as the deciding basis. (A-8). In neither case was even one allegation made by Petitioner considered in any manner.

Finally, a third Maryland District Court Judge, after approximately fifty-nine (59) docket entries, including the production of three (3) 'Vaughn Indexes,' and court ordered settlement conference, upheld the granting of summary judgment to the Government in the FOIA case, stating that all the

documents in the Government's possession were covered by FOIA exemption (b)(5) without any analysis as to whether any of the withheld documents were the 'final report' that must be released under the FOIA.

Petitioner filed, *pro se*, timely appeals in all three cases.[8] The US Court of Appeals for the Fourth Circuit, in unpublished opinions, affirmed the Maryland District Court's rulings on September 12, 2008 and September 19, 2008, respectively, giving no other basis for their rulings, and completely ignoring the facts that Petitioner had brought valid claims before the Court and that his *pro se* rights had been obliterated.[9] (A-1).

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[8] Petitioner first filed a Petition for Writ of Mandamus in the FOIA case alleging that the District Court had usurped their authority, which was denied by the Fourth Circuit under the premise that mandamus was unavailable to those who enjoy the right of appeal.

[9] Petitioner filed formal-style papers and briefs with the District and Fourth Circuit Courts.

ARGUMENT FOR GRANTING THE WRIT

The District Court's rulings in the FRCP 60(b) cases are in direct conflict with multiple holdings by this Court and numerous holdings by other Courts of Appeals. Further, the underlying and alleged "defiled" Opinion in the Copyright Case issued by the Fourth Circuit is being used as case law throughout this country, is being taught in prestigious law schools such as Georgetown University, and is mentioned on numerous websites such as Wikipedia's discussion as to whether law firms acting *pro se* may recover legal fees. The alleged defilement of the underlying Judgment involves one of the most important and gray areas of the law, the Copyright Act, and therefore the alleged "Fraud Upon the Court" committed to achieve the defiled Judgment is far reaching and of great import, and has, in fact, defiled the resolution of other cases as well as the legal education of future attorneys.

This Court should also take this opportunity to expand upon their directives to the lower Courts issued in Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594 (1972) when it comes to *pro se* litigants attacking politically sensitive cases in the civil arena out of necessity because members of the Bar refuse to get involved.[10]

Further, these actions represent a complete departure from the accepted and usual course of judicial proceedings, and the blind sanctioning of

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[10] This Court has stated that "[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." NLRB v. Robbins Tire & Rubber Co., 437 US 214, 242 (1978).

same by the Fourth Circuit, as to call for the exercise of this Court's supervisory power.

I. THE DISTRICT COURT'S OPINION, AFFIRMED MY THE FOURTH CIRCUIT WITHOUT EXPLANATION, WHEREIN THE SUBJECT US DISTRICT JUDGE DENIED PETITIONER'S ALLEGATIONS OF *EXTRAJUDICIAL BIAS* IS IN DIRECT CONFLICT WITH THE HOLDING IN LITEKY V. UNITED STATES, 510 U.S. 540, 548 (1994), OTHER PRECEDENTS BY THIS COURT, AS WELL AS HOLDINGS BY OTHER COURTS OF APPEALS.

A. The Copyright Case in 2001

In 2001, the District Court concealed, repeatedly, from Petitioner and his Attorney the nature of the Court's relationship with Petitioner's former juvenile attorney in Cleveland, Ohio, Gerald A. Messerman, Esq., and the contacts that the Court must have been having with Messerman. Messerman was the cause of Petitioner's collateral criminal prosecution by the State of Maryland by not having expunged Petitioner's Ohio juvenile record as he repeatedly told Petitioner, and stated to him in writing, that he had, in fact, done so. **At the exact moment in time that the underlying Copyright Case was beginning**, Messerman was having combative conversations with Petitioner's criminal attorney in Maryland who was defending the criminal charges, Richard M. Karceski, about what testimony he was willing to provide to assist Petitioner.

Messerman said several times to Karceski and Petitioner that he was worried about being sued by Petitioner for malpractice, which, in fact, later, he

was. Messerman not only refused to come to Maryland to testify truthfully as to his mistake in the Ohio juvenile case, but, importantly, he was made aware that he would need to be a fact witness in the pending Copyright Case before the District Court because of conversations he had with Copyright Case witness and Blum Respondent accomplice Robert N. Grossbart, Esq., in 1988 on behalf of Petitioner in regard to Petitioner's manuscripts and their development. It is Petitioner's contention that the District Court ignored the evidence and threw the Copyright Case at the TRO Hearing so that Messerman would not have to come to Maryland to testify at Trial in the Copyright Case as a fact witness, including testifying as to his malpractice against Petitioner, but also that the District Court threw the case to spank Petitioner, to teach him a lesson, and to assist in his criminal prosecution so as to help Messerman defend himself against Petitioner's claims.[11]

The District Court, at the end of the TRO Hearing on November 20, 2001, while making its Oral Order, made a brief reference to knowing Messerman and complimented his legal acumen.[12]

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[11] If Petitioner had been found guilty of the Maryland State Gun Charges, because of the vagaries in legal malpractice litigation, Messerman would, most likely, have been off the hook civilly.

[12] Even that comment showed bias to Petitioner. One wonders what the Judge would have thought about an attorney who had gotten him, or his child, charged with a crime by dispensing wrong and negligent information? See, "When a trial judge personally vouches for credibility of a witness, or states that he would not believe any witnesses called by a particular party, recusal is appropriate." Dee v. Institutional Networks Corp., 559 F. Supp. 1282 (S.D.N.Y.1983). See also, "Reasonable person

(A-109). Soon after this hearing, in late November 2001, Petitioner flew to Cleveland, Ohio to beg Messerman to help with the defense of the Maryland criminal case. At this meeting, Messerman told Petitioner that he and the presiding Maryland District Court Judge in the Copyright Case had been "college roommates" at Georgetown University during graduate school and that he had been the District Court Judge's "mentor," among many other things. Petitioner was very surprised.

Later, in 2003, after the Fourth Circuit remanded the attorneys' fees issue to the District Court (A-87), Petitioner put this information in an affidavit, thorough counsel, attached to a Motion to Recuse. In Reply to this Motion to Recuse, the Court, for the first time, answered as to Petitioner's complaints regarding the Court's conflict, while, concealing, avoiding, or misleading as to the substantial allegations. (A-61). But, it was only during preparation of these underlying FRCP 60(b) actions during the Winter and Spring of 2007 that Petitioner saw, finally, after reading the same thing over and over, the slip that the Court made in this Reply, and information several lawyers had repeatedly missed.

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would have harbored doubts about judge's impartiality, so she should have recused herself, in view of acrimonious relationship between defendant and attorney whom she had charged with criminal actions and who, along with his wife, had been law school classmate of the judge and her husband and who was a partner of the judge's husband." U.S. v. Jordan, 49 F.3d 152 (5th Cir. 1995). **Further, one wonders why those comments were not made immediately when letters between Messerman and Petitioner were introduced into the record earlier in the Hearing?**

What was long suspected was now the truth. In Judge Garbis' own words:

> "When assigned this instant case in August of 2001, I noted that Plaintiff's criminal counsel in Cleveland had been Mr. Messerman. This fact was of no moment to me whatsoever." (Emphasis added). (A-62).

It is clear from this statement, as Petitioner's Copyright Case was filed on August 29, 2001 and made no mention of Messerman, that the District Court was having secret, clandestine conversations with either Gerald A. Messerman, Esq., or someone on his behalf. Otherwise, how would the Court know this information? The Court violated both 28 U.S.C. §§ 455(a) & (e) by not recusing themselves immediately at the beginning of the case and/or by not at the beginning of the case putting their *extrajudicial* knowledge out for all to know and to make objections to as need be. Because this information was concealed, and because it still has not been answered to, a reasonable person could only infer that a lack of impartiality and bias have permeated the Copyright Case since its inception.[13]

While we do not have the subject Judge having concealed conversations with reporters from the *New Yorker*, the analysis is the same as done by the D.C. Circuit Court of Appeals in United States v. Microsoft Corp., 253 F.3d (D.C. Cir. 2001). In this case below in 2007, the District Court was asked more than three times to recuse themselves or to

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[13] While the Court has answered Petitioner's Recusal Motions several times, none of Petitioner's substantial questions have been directly answered, although many indirect obfuscations were offered. (A-5, A-15, A-19, A-21, A-61).

explain the missing Messerman information. The Court has refused to do so. One can only infer bad behavior and partiality from this silence.

Clearly, here, we have absolute proof of some sort of *extrajudicial* knowledge and contact outside of the court room. And if that isn't enough, 28 U.S.C. 455(a) speaks to "appearance" as does this Court many times. "What matters is not the reality of bias or prejudice but its appearance." Liteky v. United States, 510 U.S. 540, 548 (1994). See also, Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988), as well as the Tenth Circuit's decision in United States v. Cooley, 1 F.3d 985 (10th Cir. 1993), and the Ninth Circuit's decision in Preston v. United States, 923 F.2d 731 (9th Cir. 1991). And, as stated above, the analysis in United States v. Microsoft, should control the analysis in this case.

B. The Copyright Case in 2003 – 2007

In 2003, once confronted with partial evidence of the District Court's conflict, and once a Motion was filed for Recusal, the District Court continued to bash Petitioner, and, knowing their hidden and concealed multiple conflicts, awarded the Copyright Case Defendant law firms more than $151,000.00 in attorney's fees for their *pro se* representation of their own firms. Clearly, evidence of bias.

Further, when Petitioner won a settlement from Grossbart in one of the three Maryland state tort actions he filed, this money was garnished by the Copyright Case Defendants and processed through the District Court by the subject Judge, knowing full well that this money was being "stolen" by the Defendants under the hidden guise of the Court's lack of impartiality. The Court continued to watch,

as the Defendants harassed Petitioner and his wife[14]

[14] The Blum Respondents knew that Petitioner's wife was stricken with lymphoma – her own father continued to bash her family and her own financial health – hardly a man concerned about his "family," as the Fourth Circuit opined. (A-71).

Likewise, the Fourth Circuit appeared fascinated with letters Petitioner wrote Respondent Blum, Sr., years earlier in 1996 (A-71), despite the fact that the letters had nothing to do with the Copyright Case, would have only been of value had the District Court found 'theft' to have occurred as a possible mitigating factor upon sentencing, and that the Blum Respondents were obviously holding Petitioner hostage with the Maryland criminal case, which they initiated *via* Respondent Hodgson, at the exact same time as the Copyright Case, thus keeping Petitioner from being able to fully defend himself as to their fabrications re: the letters. But, in 2007, in the underlying FRCP 60(b) Motion case, Petitioner offered the following detailed clarification of his same defense offered the Court in 2001:

"[L]ikewise, letters Plaintiff wrote Defendant Blum mocking and humiliating his dysfunctional family and mirroring his extortion of Plaintiff that "Plaintiff could not marry his daughter unless Plaintiff assumed all financial obligation for her and her children," – an insulting and galling claim akin to a camel trader out of *The Book of One Thousand and One Nights (Arabian Nights)* – were represented by the Defendants to the Court as genuine "extortion" letters to Blum. It is a sure sign of Kenneth Blum Sr's paranoid and delusional manifestations, right out of DSM-IV, that he showed these letters to all, blind to how poorly they made him look, and played the victim, looking for false sympathy. The intent of these letters, lacking the more profane explanation, was simply Plaintiff telling Blum, Sr., to "Go jump in the lake."

The Fourth Circuit also appeared fascinated with the alleged 'facts' of Petitioner's juvenile record, a record based upon the illegally obtained Ohio juvenile 'confidential' police report from a rural Ohio police chief, from whom the investigation was relieved after only one day, by Respondent Hodgson in violation of Ohio law and *via* the misuse of FBI resources. (A-72).

with numerous garnishments and bank account freezes, depositions, and other harassments, all the while knowing that the Court was keeping hidden from Petitioner and his Attorney information which would have warranted the Recusal of the Court and the vacatur of the Judgment.

C. The Copyright Case in 2007

In 2007, Petitioner filed, *pro se*, a Renewed Motion for Recusal, a Motion for Reconsideration, and a Supplement, later converted by the Court to an Independent Motion because of clerical error.

Petitioner asked the Court to Recuse because of the non answer as to the Messerman issues, the fact that the Court was the subject of the Rule 60(b) Actions, the fact that the Court was a former law partner with an attorney in the Copyright Case who was the alleged 'architect' of the "Fraud Upon the Court," the fact that the Court and the Defendants were subjects of the US Attorney investigation, that the District Court was now a Defendant in Petitioner's FOIA lawsuit, and, finally, that the Judge was 'best friends' and had written books with the attorney who was representing the primary fact witness in the Copyright Case, should the Court's Orders be vacated.

The Court repeatedly violated both 28 U.S.C. 455(a) & (e) by either not recusing, not answering to recusal, or not revealing conflicts, such as the conflict with attorney Paul Mark Sandler, Esq., which was independently discovered by Petitioner by

accident.[15] In addition, any 'reasonable person' would have wanted the Judge to inform them, which he neglected to do, as to his membership in a private law club with one of the actual Defendants in the Copyright Case, several of the attorneys in the Copyright Case, some of whom also had fiduciary interests in some of the law firms who were named Defendants in the Copyright Case, as well as the attorney of the main witness in the Copyright Case who had and still has substantial financial interest in the outcome of the litigation.[16]

The facts here are obvious. And they are multiple. Further, the close call should go to the party asking for recusal. See, "If question of whether judge's impartiality might reasonably be questioned so as to require his disqualification is close one, balance tips in favor of recusal." Nichols v. Alley, 71

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[15] Mr. Sandler represents Respondent Miriam Pessin in the Maryland state tort action against her and is the previously mentioned current 'best friend' of the subject Judge.

[16] "The determinate of disqualification for personal bias or prejudice is not a judge's introspective estimate of his own ability impartially to hear case, but is what a reasonable person knowing all the relevant facts would think about the impartiality of the judge." Roberts v. Bailar, 625 F.2d 125, on remand, 538 F. Supp. 424 (6th Cir. 1980). See also, "For purposes of statute providing for a judge to disqualify himself in any proceeding in which his impartiality might reasonably be questioned, whether there is any basis for such questioning is to be determined by objective standard of whether a reasonable and informed observer would question the judge's impartiality; standard assumes that a reasonable person knows and understands all the relevant facts." Cobell v. Norton, 237 F. Supp. 2d 71 (D.D.C. 2003), mandamus denied in part, 383 F.3d 1036, 363 U.S. App. D.C. 228, issued 2004 WL 2059502, cert. denied, 125 S. Ct. 1325, 543 U.S. 1150, 161 L. Ed. 2d 113 (2005).

F.3d 347 (10th Cir. 1995). "Judge should exercise his discretion in favor of disqualification if he has any question about propriety of sitting in particular case." Hall v. Small Business Admin., 695 F.2d 175 (5th Cir. 1983).

In sum, the prime gravamen of Petitioner's complaints in the underlying Copyright Case is that the subject US District Court Judge could not, and would not, have ignored the "equity" provision in the Copyright Act, subjected Petitioner to paying attorney's fees to the parties who stole his property, denied Petitioner, to this day, the return of his manuscripts, or made the following statements in his Orders regarding Respondent Hodgson's theft of Petitioner's manuscripts unless his impartiality was seriously imperiled, as described above. The following findings of fact by the subject US Judge are in direct conflict with 17 U.S.C. § 506 and 18 U.S.C. § 2319:

> "The book ends up as -- and on the facts it end up in Mr. Pessin's house. **It's not part of his legal practice, because he wasn't doing this as a lawyer**, and the copy is either going to be thrown out, but it's given to Mr. Hodgson, and we can make some debate as to who owns that copy, but that's really different from analyzing the copyright.
>
> This is not a confidential document in any kind of privileged sense. **And, in any event, Mr. Hodgson did not steal it.** Mr. Hodgson got the document from somebody who had control of that copy, who appeared to be legally entitled to do so, and gave it to him. I'm not

> casting any stones at him." (A-110). (Emphasis added.)
>
> "Defendant Hodgson, the private investigator, obtained a copy of the manuscript from the widow of the person who had assisted Plaintiff in trying to find a publisher. To the extent that Plaintiff may have had some claim that **Defendant Hodgson wrongfully obtained the physical copy of the manuscript, such a claim [FN3] was by no means based on the copyright law. [FN3: The Court does not suggest that there was any viable claim of this type.]**" (A-98). (Emphasis added.)

Petitioner is adamant that he did not get a fair or an impartial hearing before the Maryland District Court in 2001 or at anytime afterward.[17]

II. THE FOURTH CIRCUIT IGNORED THAT ATTORNEYS WERE INVOLVED IN THE ALLEGED 'FRAUD UPON THE COURT' IN DIRECT CONFLICT WITH THEIR OWN PRECEDENT AND THE HOLDING IN HAZEL-ATLAS GLASS CO. V. HARTFORD-EMPIRE CO., 322 U.S. 238 (1944).

The second gravamen of Petitioner's complaints in the underlying Copyright Case is that the Blum Respondents hid material facts and information from

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[17] Petitioner sought the counsel of at least four (4) attorneys specializing in 'intellectual property rights' who all advised Petitioner in 2001 that federal copyright litigation was the only way to gain the return of his manuscripts. For the subject US Judge to claim that the Copyright Act does not cover the conversion of copyrighted works defies the Act, common sense, and even the FBI warning we all see every time we rent a DVD from the video store.

the District Court in 2001 regarding their conspiracy to steal Petitioner's manuscripts, including that they knew they were going to an attorney's office to obtain Petitioner's manuscripts entrusted to that attorney on behalf of Petitioner in violation of the law and the Maryland Lawyers' Rules of Professional Conduct. **The following was not fully discovered until almost three years after the Copyright Case Hearing in 2001:**[18]

Respondent Alan S. Cohn is a Convicted Federal Felon. Respondent Alan S. Cohn is the son-in-law of Respondent Kenneth Blum, Sr. Respondent Alan S. Cohn pled Guilty to Conspiracy in the US District Court for the District of Maryland in 1989 for attempting to rig an Atlanta, Georgia health care contract along with a known Mafia connection, Angelo T. Commito. Respondent Alan S. Cohn was disbarred by the Maryland Court of Appeals on January 24, 1992. In return for Cohn's Guilty plea and a company fine of $150,000.00, the Government dropped its indictment of Cohn's father-in-law's company, United Healthcare, and its officers, including Respondent Kenneth Blum, Sr., and Respondent William H. Slavin, Respondent Blum Sr's son-in-law at the time.[19]

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[18] Respondents actually implied in their Motion to Strike and Dismiss the FRCP 60(b) Motion case before the District Court in 2007 that Petitioner's former counsel should have been clairvoyant during the TRO Hearing before the District Court in 2001 and should have been able to bring Petitioner's claims of additional wrongdoing out during that "evidentiary" Hearing.

[19] Respondent and attorney Gerard P. Martin, Esq., defended Respondent Cohn in the Federal prosecution. It was the same Chief, Criminal Division, United States Attorney for the

In the Copyright Case below, Respondent Alan S. Cohn was friends with Copyright Case witness and Blum Respondent accomplice Robert N. Grossbart, Esq. Accomplice Robert N. Grossbart, Esq., knew Respondent Dudley F.B. "Butch" Hodgson and referred Respondent Hodgson to Respondent Cohn at Respondent Cohn's request. Respondent Hodgson, a former high-ranking FBI agent and private investigator, was then hired by Respondent Blum, Sr., his wife, Respondent Erlene Blum, and their son, Respondent Kenneth Blum Jr., through the referral of Respondent Alan S. Cohn, *via* accomplice Robert N. Grossbart, Esq., in 2000 to investigate Petitioner. In April 2001, Respondent Blum, Sr., and Respondent Slavin sent Respondent Hodgson to the law offices of Petitioner's deceased attorney, Norman E. Pessin, Esq., to steal Petitioner's manuscripts. Accomplice Grossbart told Respondent Hodgson that Pessin had the manuscripts and where and how to go get them. Law firm Respondents Paul Dorf, Esq., and Carolyn A. Griffin, Esq., hid their knowledge of Respondent Hodgson and his actions from Petitioner and the Court.[20]

Accomplice and attorney Grossbart and Respondent Hodgson then hid their professional files

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District of Maryland who investigated Petitioner's complaints about the Blum Respondent's actions in the Copyright Case who also prosecuted the United Healthcare case and convicted Respondent Cohn. Clearly, Petitioner's complaints did not fall upon deaf ears.

[20] The involvement of Federal Felon Alan S. Cohn in the conspiracy to steal the manuscripts is just one of many of the facts which were hidden from Petitioner during Discovery in the underlying Copyright Case and which form the basis of Petitioner's allegations of "Fraud Upon the Court."

on Petitioner in defiance of state and federal subpoenas and at the TRO Hearing before the District Court in 2001. Accomplice and attorney Grossbart and Respondents Hodgson, Pessin, Blum, Sr., and Blum Jr., gave knowingly false testimony about material facts at the Copyright Case TRO Hearing in 2001 and/or in prior state and federal depositions. Respondents and attorneys Dorf and Griffin gave knowingly false testimony at the Copyright Case TRO Hearing in 2001 and/or in prior state and federal depositions about their knowledge of Norman Pessin, Esq., and Hodgson's acts, among other things. Respondent and attorney Gerard P. Martin specifically instructed Respondent Hodgson not to produce subpoenaed documents at the state and federal depositions and at the TRO Hearing before the District Court in 2001, and, later, testified to that fact.

Clearly, an attorney and member, and then Chairman, of the Maryland State Bar Association's Standing Committee on Ethics should not be telling Respondent Hodgson not to produce documents, especially when he was the primary counsel in the Copyright Case. The following transcript is from Respondent Hodgson's deposition in the Maryland state tort action, William C. Bond v. Gerald A. Messerman (Grossbart): (Mr. Martin gave a much fuller, "Mr. Bluster-style," explanation for his client's non production of documents off the record in the Hodgson deposition, which was basically, they didn't produce the documents, so now, "What are you gonn'a do about it?")

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10 Q. You were deposed in connection with the

11 custody case?

12 A. Right.

13 Q And you were deposed in connection with

14 the copyright case?

15 A. Yes.

16 Q. Did you receive for both of those

17 depositions, or either one of them, a document

18 similar to Exhibit No. 1 here today, the amended

19 notice of deposition duces tecum, which instructed

20 you to bring your entire file pertaining to the

21 matters of this investigation?

53

1 A. Gerry?

2 MR. MARTIN: I don't know what it said. I

3 know you had to bring something. I don't know

4 what it said.

5 A. Yes. I know that I had to bring some

documents. Whether it was my entire file or not I don't recall.

Q. And certainly if they had requested that you bring everything pertaining to the investigation or some variation on that theme, you would have certainly produced them and brought them?

A. I would have, right.

Q. Next I'd like to show you --

MR. MARTIN: I'm going to make an objection. He may not have, on my advice. I may --

MR. GUNNING: Excepting matters of privilege, et cetera, et cetera.

MR. MARTIN: And I also may have had agreements with the people who issued the

subpoena.

Q. I show you Exhibit No. 12, again recovered from your file, can you tell me what that

Petitioner stipulates to this Court that Mr. Martin had no such agreements with counsel in the custody or Copyright Cases not to produce anything. Further, the Maryland State and Federal Rules require a deponent to identify each privilege they are asserting, etc. What Mr. Martin is sub consciously alluding to here, is that, in fact, it was the **prosecutor** in the Maryland Attorney General's Office with whom he had agreements with, a *de facto* admission that not only were Respondent Hodgson and Respondent and attorney Martin agents of the State, but that the manuscripts were obtained under the direction of the State, in leu of a search warrant, which they had no basis to obtain.

The facts below are clear that Respondent and attorney Gerard P. Martin was the primary leader and orchestrator of the "Fraud Upon the Court" perpetrated by the Blum Respondents.

A. Argument

The Federal Rules of Civil Procedure, Rule 60(b) controls this action. Petitioner seeks relief under (3) three subsections of Rule 60(b): (1) "Fraud Upon the Court" by Officers of the Court, (2) "Fraud upon the Court" by an Orchestrated Effort to Defraud the Court on a Matter of Public Import, and (3) an "Independent Action."

"FRAUD UPON THE COURT" by Officers of the Court is:

> "[T]ypically confined to the most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an attorney, in which the integrity of the court and its ability to function impartially is

> directly impinged." Great Coastal Express, Inc., v. International Brotherhood of Teamsters, 675 F.2d 1349 (4th Cir. 1982). "Fraud upon the court" should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Fraud inter partes, without more, should not be a fraud upon the court, but redress should be left to a motion under 60(b)(3) or to the independent action." Great Coastal Express, Inc., v. International Brotherhood of Teamsters, 675 F.2d 1349 (4th Cir. 1982).

IBT also takes exception to the district court's conclusion that fraud on the court requires involvement by attorneys. "**Involvement of an attorney, as an officer of the court, in a scheme to suborn perjury would certainly be considered fraud on the court.**" (Emphasis added.) Great Coastal Express, Inc., v. International Brotherhood of Teamsters, 675 F. 2d 1349 (4th Cir. 1982). Other circuits have also recognized that fraud on the court can occur without the involvement of attorneys. See also, Toscano v. Commissioner, 441 F.2d 930, 933-34 (9th Cir. 1971); Lim Kwock Soon v. Brownell, 369 F.2d 808 (5th Cir. 1966). See also, Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), In re Genesys Data Technologies Inc., v. Genesys Pacific Technologies, Inc., 204 F.3d. 124 (4th Cir. 2000), Outen v. Baltimore County, Maryland 177 F.R.D. 346 (4th Cir. 1998).

Clearly, as listed in detail above and below, Attorneys Martin, Grossbart, Dorf and Griffin, former FBI Agent and Licensed Maryland State Private Investigator Hodgson, and US District Judge Garbis all suborned perjury and/or perpetrated a "Fraud Upon the Court." The Fourth Circuit's own precedent clearly states that when the "Fraud Upon the Court" involves an attorney FRCP 60(b) relief is mandated.

"FRAUD UPON THE COURT" by an Orchestrated Effort to Defraud the Court on a Matter of Public Import:

The dissent by Judge Butzner in Great Coastal Express, Inc., v. International Brotherhood of Teamsters, 675 F.2d 1349 (4th Cir. 1982) illustrates this issue as clear as day, quoting from this Court's holding in Hazel-Atlas Glass Co. V. Hartford-Empire Co., 322 U.S. 238 (1944):

> "[I]n Hazel-Atlas, the defrauded litigant was mulcted of one million dollars, and the judgment had been entered eight years before it was challenged. The Court acknowledged that "in most instances society is best served by putting an end to litigation after a case has been tried and judgment entered." 322 U.S. at 244, 64 S. Ct. at 1000. But there are exceptions to this general rule. Notwithstanding the eight-year delay, the opinion affirmed the power of federal courts to set aside a fraudulent judgment, saying: "But where the occasion has demanded, where enforcement of the judgment is 'manifestly unconscionable,' they have wielded the power without hesitation." 322 U.S. at 244-45, 64 S.

Ct. at 1000-01 (citations omitted)... The Court said: 322 U.S. at 246, 64 S. Ct. at 1001, Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. 322 U.S. at 246, 64 S. Ct. at 1001...

Hazel-Atlas requires proof of two elements to establish fraud on the court for the purpose of setting aside a civil judgment when the court itself has not been compromised by bribery or corruption. These two elements distinguish fraud on the court from the type of fraud that Rule 60(b) requires to be asserted within one year. **The first is that the judgment involves an issue "of great moment to the public ...."** (Emphasis added.) 322 U.S. at 246, 64 S. Ct. at 1001. A dispute that concerns only private litigants is not enough. See, S & E Contractors, Inc. v. United States, 406 U.S. 1, 15, 92 S. Ct. 1411, 1419, 31 L. Ed. 2d 658 (1972) (dictum).

The second requirement of Hazel-Atlas is best described in the words of the Court, 322 U.S.

> at 245-46, 64 S. Ct. at 1000-01: **This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here .. we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals.**" (Emphasis added.)

Here, in this case, at its base, we have a complaint for Copyright Infringement, an obvious matter of "public import." Further, the Fourth Circuit Opinion, based upon the defrauded District Court Ruling, is being used as case law throughout the United States, making this an obvious matter of <u>great</u> "public import."

Finally, as has been shown, and was shown below, by extensive evidence, circumstantial evidence, and also by what can naturally be inferred, the Defendants, Witnesses, Other Persons, and Attorneys in the Copyright Case "**deliberately planned and carefully executed a scheme to defraud not only the District Court, but also the Fourth Circuit,**" in addition to the previously mentioned custody and criminal cases. Further, Defendants carried their "Fraud" into the Circuit and Appellate Courts of Maryland to continue and defend their illegal gains.

<u>"FRAUD UPON THE COURT," An Independent Action</u>:

Petitioner below was denied by Defendants, Witnesses, Other Persons, and Attorneys by their Fraud from making valid claims and defenses and joining issues, including, but not limited to, Criminal

Copyright Claims. See, Great Coastal Express, Inc., v. International Brotherhood of Teamsters, 675 F.2d 1349 (4th Cir. 1982).

Clearly, by withholding material facts from the District Court in 2001, the Blum Respondents gained an improbable ruling in their favor regarding their "fair use" defense under 17 § U.S.C. 107, specifically regarding the "purpose and character of the use," and denied the District Court and the Fourth Circuit the opportunity to examine whether criminal infringement under 17 U.S.C. § 506 had occurred?[21] If the Blum Respondents did not steal Petitioner's manuscripts and papers and, in the process, commit "Fraud Upon the Court," why did they lie repeatedly about these facts and commit other crimes? The Blum Respondents' perjury, subornation of perjury, obstruction of justice, and other crimes are *de facto* admissions as to the Blum Respondents' guilt. And, clearly, as well, these crimes fall under the title of 'racketeering activity' as described under 18 U.S.C. §§ 1961, 1962, & 1964 despite the District Court's rejection of that theory. (A-32).

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[21] The obvious analogy here is could, or would, the District Court and/or the Fourth Circuit have sustained "fair use" had the Blum Respondents broken into the vaults of the Bank of America to gain Petitioner's manuscripts rather than simply going to the offices of Petitioner's deceased attorney without his knowledge or consent? Further, whether Pessin was wearing the hat of literary agent or attorney in this matter – and he was clearly representing Petitioner as an attorney – the Maryland Rules prevented him from giving Petitioner's chattel (the manuscripts) to anyone without Petitioner's consent, nor to even acknowledge their existence.

The Copyright Case was litigated as if an evidentiary hearing for the Maryland state custody case, rather than a legitimate copyright action.[22] While the District and Fourth Circuit Courts had many reasons to vacate the underlying Orders in the Copyright Case, that the Courts would not even grant Petitioner limited relief such as the return of his manuscripts, the vacation of attorney's fees awards, grant new discovery, and strike from the record any statement that "Hodgson did not steal it (the manuscripts)" (A-110) is simply "unconscionable" and inhuman.[23]

CONCLUSION

A US District Judge may not modify the judgment of another US District Judge without the first Judge granting recusal or being disabled, yet this is exactly the position the US District Court for the District of Maryland put Petitioner in 2007 by assigning his FRCP 60(b) Independent Action to a

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[22] The Maryland State Judge hearing the custody case disregarded the manuscripts in whole as Petitioner "had never shown them or discussed them with the minor children at issue." The Judge also ruled that Petitioner had been "quite generous, financially" to the minor children at issue.

Ironically, it was the Blum Respondents who publicized the manuscripts, allegedly putting them on the front page of the *Washington Post* on December 10, 2001, circulating the contents and subject matters to the minor children's school classmates, etc., and, thus, causing the minor children much embarrassment and emotional suffering.

[23] Petitioner even included in his brief to the Fourth Circuit in appeal 08-1171 actual photographs of the stolen manuscripts introduced into evidence before the District Court in 2001. The manuscripts were set inside three blue binders with the title "Property of Kenneth Blum, Sr.," on the covers.

different US District Judge than the original US District Judge in the Copyright Case, seemingly giving both US District Judges jurisdiction over the same underlying Copyright Case Judgment.[24] Further, common sense dictates that no US District Judge on the same US District Court is going to supervise investigations, under the FOIA, into misconduct, and investigations thereof, of his fellow US District Judge, or the Court in whole, without being persecuted, or being subject to persecution, by his fellow US District Judges.

Petitioner repeatedly pled with the US District Court for the District of Maryland for Recusal in whole, for a change in Venue, and/or for the Court to assign these cases to a specially appointed visiting Judge from outside the jurisdiction. Police departments regarding their 'internal affairs investigations departments' have more protocols for handling the type of conflicts these cases presented than the District Court itself did. Coldly, the Fourth Circuit turned a blind eye to all claims made by Petitioner, giving no explanation for its decisions.[25]

While Petitioner recognizes his odds are long in being granted *certiorari*, clearly the facts of this case and the law are on Petitioner's side. Every citizen of this country has the right to rehabilitate themselves and to bring honest claims before the proper forum

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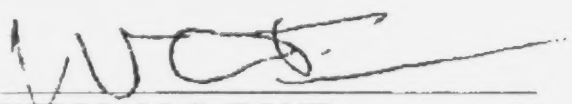
[24] Petitioner cannot find any precedent for this scenario.

[25] Petitioner was entitled, at minimum, to a detailed analysis of his post judgment claims by both the District and Fourth Circuit Courts in regard to his FRCP 60(b) Independent Action as this Court held in Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594 (1972) and the Fourth Circuit's own precedent dictated in Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978).

to be judged upon the merits. In these cases, it has been always about Petitioner's past, rather than his valid claims.[26] Clearly, what has happened here is unconscionable. Petitioner is entitled to have his Petition for Writ of Certiorari granted, if not being granted summary relief in part or entirely.

Respectfully presented,



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[26] While there is the obvious question as to whether Petitioner's literary efforts were in good taste, and despite the Fourth Circuit's shellacking of Petitioner in their 2003 Opinion regarding Petitioner, his incomplete juvenile record, and his incomplete manuscripts (A-76), possibly Petitioner's experiences in literary form might add to the national discussion on poor parenting and the overall decaying of values which pervades our society. Certainly, Petitioner has been prejudiced in this regard by having his unpublished works all over the internet courtesy of the underlying Opinion, which was one of Petitioner's arguments to this Court in 2003.

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 07-1720

WILLIAM C. BOND,

Plaintiff - Appellant,

v.

KENNETH BLUM, SR.; DUDLEY F.B. HODGSON; WILLIAM SLAVIN; MCDANIEL, BENNETT & GRIFFIN; ADELBERG, RUDOW, DORF & HENDLER, LLC; CHRISTOPHER W. NICHOLSON; KENNETH BLUM, JR.,

Defendants - Appellees,

And

MERRILL LYNCH & CO; MERCANTILE BANKSHARES CORPORATION; BANK OF AMERICA; LAW OFFICES OF TIMOTHY M. GUNNING; HOWARD J. SCHULMAN; SCHULMAN & KAUFMAN, LLC; THOMAS & LIBOWITZ, PA; MICHAEL S. LIBOWITZ; LAW OFFICES OF RICHARD M. KARCESKI;RICHARD M. KARCESKI; BANK OF AMERICA, NA; BANK OF AMERICA CORPORATION,

Garnishees,

v.

ALYSON BOND, Co-Movant to release writ of garnishment; SCHULMAN & KAUFMAN, LLC; HOWARD J. SCHULMAN,

Movants.

No. 08-1171

WILLIAM C. BOND,

Plaintiff - Appellant,

v.

KENNETH BLUM, SR.; ERLENE BLUM; ALAN S. COHN; ROBIN COHN; KENNETH BLUM, JR.; DUDLEY F.B. HODGSON; WILLIAM H. SLAVIN; WILLIAM A. MCDANIEL, JR.; CAROLINE A. GRIFFIN; MCDANIEL, BENNETT & GRIFFIN; MCDANIEL & GRIFFIN; PAUL A. DORF; ADELBERG, RUDOW, DORF & HENDLER, LLC; GERARD P. MARTIN; MIRIAM PESSIN; RENT-A-WRECK OF AMERICA, INCORPORATED,

Defendants - Appellees.

Appeals from the United States District Court for the District of Maryland, at Baltimore. Marvin J. Garbis, Senior District Judge; J. Frederick Motz, District Judge. (1:01-cv-02600-MJG; 1:07-cv-01385-JFM)

Submitted: August 27, 2008
Entered: September 19, 2008

Before NIEMEYER, MICHAEL, and KING, Circuit Judges. Affirmed by unpublished per curiam opinion.

William C. Bond, Appellant Pro Se. Amy E. Askew, William Fitts Ryan, Jr., WHITEFORD, TAYLOR & PRESTON, LLP, Baltimore, Maryland; Gerard Patrick Martin, Thy Christine Pham, ROSENBERG, MARTIN & GREENBERG; LLP, Baltimore, Maryland; Kathryn Miller Goldman, JIRANEK, GOLDMAN & MINTON, LLC, Baltimore, Maryland; Jo C. Bennett, William Alden McDaniel, Jr., MCDANIEL, BENNETT & GRIFFIN,Baltimore, Maryland; Andrew Radding, Michael Richard Severino, ADELBERG, RUDOW, DORF & HENDLER, LLC, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William C. Bond appeals the district court's rulings dismissing his dual actions filed pursuant to Fed. R. Civ. P. 60(b). In Case No. 07-1720, Bond appeals from the district court's order denying his motion for reconsideration of the judgment in his underlying copyright action.[1] This court reviews the denial of a Rule 60(b) motion for an abuse of discretion. See MLC Automotive, LLC v. Town of Southern Pines, 532 F.3d 269, 277 (4th Cir. 2008). We have reviewed the record and conclude that the district court did not abuse its discretion in denying

[1] See Bond v. Blum, 317 F.3d 385 (4th Cir. 2003).

the motion for reconsideration.[2] Accordingly, we affirm for the reasons stated by the district court. Bond v. Blum, No. 1:01-cv-02600-MJG (D. Md. July 12, 2007).

In Case No. 08-1171, Bond appeals from the district court's sua sponte dismissal of his "independent action" under Rule 60(b), in which Bond sought monetary damages for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. §§ 1961-1968 (West 2000 & Supp. 2008), and other federal statutes. We have reviewed the record and find that the district court did not err in dismissing Bond's action. Accordingly, we affirm for the reasons stated by the district court. Bond v. Blum, No. 1:07- cv-01385-JFM (D. Md. June 26, 2007).

While we grant Bond's motion to supplement his informal brief in Case No. 07-1720, we deny all other pending motions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

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[2] Bond also appeals from the district court's denial of a number of other post-judgment motions that were filed in this case, including a motion to recuse the presiding judge. Upon review of the record, we find there were no valid grounds for recusal and that the district court did not err in denying Bond's post-judgment motions.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL ACTION NO. MJG-01-2600

WILLIAM C. BOND

Plaintiff

vs.

KENNETH BLUM, SR., et al.

Defendants

Entered July 26, 2007

MEMORANDUM AND ORDER

The Court has before it Plaintiff's Limited Motion to Alter or Amend Memorandum And Order of July 12, 2007 [Document 277]. The Court finds that neither a response nor a hearing is necessary.

Plaintiff contends that, due to an error by the office of the Clerk of Court, he was deprived of the opportunity to have the Court consider his Supplement to Motion to Reconsider Memorandum And Order [Document 273] [the "Supplement"] before issuing its July 12, 1977 Memorandum And Order [Document 277]. The Court, assuming that there was an error as alleged by Plaintiff, has considered the contents of the Supplement. The Supplement, if available prior to issuance of the Memorandum And Order Re: Recusal Reconsideration [Document 267] and prior to the

Memorandum And Order issued July 12, 2007 [Document 277], would have made no difference whatsoever in this Court's action.

While no discussion is necessary, it is appropriate to note that even if there were some basis for contending that the undersigned Judge should recuse himself in a case in which Mr. Sandler is counsel,[1] the matter would be of no moment in the instant case. Plaintiff appears to contend that the fact that in 2004 Plaintiff sued Miriam Pessin (not a party in the instant case) and Paul Mark Sandler, Esquire (not counsel in the instant case) became counsel for Miriam Pessin in that 2004 case, somehow had some pertinence to this case. However, in the instant case, well before Plaintiff sued Ms. Pessin and Mr. Sandler became her counsel, this Court had entered judgment for the Defendants (November 27, 2001), there was the January 24, 2003 affirmance by the United States Court of Appeals for the Fourth Circuit and this Court awarded legal fees to law firm Defendants pursuant to the Fourth Circuit remand on April 25, 2003 and May 6, 2003.

Finally, as stated in this Court's Memorandum And Order issued July 12, 2007, "there is no doubt whatsoever that any reasonable judge would, as did the unanimous panel of the United States Court of Appeals for the Fourth Circuit, rule that Plaintiff's claims presented in the instant case were without merit." [Document 274] at 7.

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[1] There is no such basis and, indeed, Mr. Sandler has been, and is currently, counsel in various cases before the undersigned Judge without any issue having been raised by anyone.

Accordingly, Plaintiff's Limited Motion to Alter or Amend Memorandum And Order of July 12, 2007 [Document 277] is DENIED.

SO ORDERED, on Thursday, July 26, 2007.

/ s /
Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL ACTION NO. MJG-01-2600

WILLIAM C. BOND

Plaintiff

vs.

KENNETH BLUM, SR., et al.

Defendants

Entered: July 12, 2007

MEMORANDUM AND ORDER

The Court has before it:

1. Plaintiff's Motion for Fed.R.Civ.P.60(b) Relief From Judgment or Order [Document 247],
2. Defendants' Joint Motion to Strike and Dismiss Pro Se Plaintiff William C. Bond's Motion for Relief from Judgment Pursuant to Fed.R.Civ.P.60(b) [Document 265],
3. Plaintiff's Motion for Discovery, Motion for Discovery of the United States Attorney's Office for Maryland, and Motion for Discovery Under Fed.R.Civ.P. Rule 27 [Document 251],
4. Plaintiff's Motion for Temporary Restraining Order Until Plaintiff's Renewed Motion to Recuse and Motion for Case to be Specially Assigned to a Visiting Judge or that the Court Grant a Change of Venue is Granted

and the Court Holds a Hearing on Plaintiff's Motion for Permanent Injunction and Restraining Order [Document 245],

5. Plaintiff's Motion to Refer Criminal Acts to the U.S. Attorney for Maryland and/or the Department of Justice, to Refer Attorney Misconduct to the Maryland Attorney Grievance Commission, and to Refer Judicial Misconduct to the Chief Judge of the 4th Circuit [Document 248],

6. Plaintiff's Motion in Limine and/or Protective Order [Document 250], [Document 249],

7. Plaintiff's Motion to Disqualify Attorneys [Document 249],

8. Plaintiff's Motion for Permanent Injunction and Restraining Order and Request for Hearing [Document 252],

9. Plaintiff's Motion for Sanctions [Document 247],and

the materials submitted relating thereto. The Court finds that a hearing is unnecessary.

I. BACKGROUND

Judge Motz of this Court recently provided a statement of the background of this case in his Memorandum of June 25, 2007 in Bond v. Blum, JFM-07-1385 ("Judge Motz's Decision"). Judge Motz stated:

> William Bond, formerly known as William Rovtar, was 17 in June, 1981, when he beat his father to death with a hammer in his grandparents' garage in Bainbridge Township,

Ohio. After Rovtar was arrested and detained in a juvenile detention facility in Ohio, he entered into a guilty-plea agreement in juvenile court with the result that in September 1981, he was transferred to the Sheppard and Enoch Pratt Hospital in Baltimore, Maryland, for psychological treatment. Rovtar was released in 1982. After his release he legally changed his name to William Bond. See Bond v. Blum, 317 F.3d 385, 390 (4th Cir. 2003). In 1987, Bond began to write Self-Portrait of a Patricide: How I Got Away with Murder, "the true story of and by William Bond," which he hoped to market to publishers for profit. The manuscript describes in detail how Bond planned and committed the murder of his father. Id. The manuscript has been characterized by Bond as a "highly fictionalized and stylized work" based on his "juvenile experience." Id. Bond's effort to find a publisher for the manuscript was not successful and after revisions, a copy of the manuscript was given to Bond's attorney, Norman Pessin, to help obtain publication. This bore no fruit and after Pessin passed away, his widow, Miriam Pessin retained a copy of the manuscript. Id. She had the manuscript in 2001, when she was contacted by Dudley Hodgson, a private investigator hired by Bond's wife's father, Kenneth Blum, Sr., to look into Bond's background, and she gave the manuscript to Hodgson. Id. at 391. Hodgson made a copy of the manuscript and gave it to William Slavin and the attorneys representing him in the

> custody matter. It was made an exhibit during Alyson Bond's deposition in July of 2001, and Slavin's attorneys intended to use it at a hearing scheduled for December 10, 2001. Id. Bond registered a copy of the manuscript in the custody proceedings. Id.
>
> Judge Motz's Decision at 2, n.3.
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> In September of 2001, Bond filed [the instant] copyright infringement action under 17 U.S.C. § 501 against law firms and their clients, primarily alleging that his autobiographical manuscript was impermissibly appropriated for use in the state court matter between his wife, Alyson Slavin Bond (nee Blum), and her former husband, William Slavin, for exclusive custody of their three children. . . . Plaintiff filed the action against Kenneth Blum, Sr.;[1] Dudley F.B. Hodgson;[2] William Slavin; McDaniel, Bennett & Griffin; Adelberg, Rudow, Dorf & Hendler, LLC; Christopher W. Nicholson; and Kenneth Blum, Jr. On November 27, 2001, judgment was entered in favor of all defendants and against Bond. Bond's claims were dismissed with prejudice, with assessable costs to be awarded in defendants' favor.

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[1] Kenneth Blum, Sr. and Kenneth Blum, Jr. are Bond's father-in-law and brother-in-law and are represented by attorney Gerald P. Martin.

[2] Dudley Hodgson is a private investigator who was hired by Kenneth Blum, Sr. to investigate plaintiff after Blum received correspondence from plaintiff which he believed to be attempt to extort money and caused him concern with regard to the safety of his daughter and his grandchildren. See Bond v. Blum, 317 F.3d 385, 390 (4th Cir. 2003).

Judge Motz's Decision at 2-3.

On January 24, 2003, the United States Court of Appeals for the Fourth Circuit affirmed this Court's Judgment, upheld the award of fees to the individual Defendants, held that the defendant law firms were not precluded from receiving a similar award and remanded the case for determination as to fee awards for the law firm defendants. Petitioner unsuccessfully sought a rehearing en banc and a Petition for Writ of Certiorari from the United States Supreme Court.

On remand, this Court denied Petitioner's motion for recusal on April 25, 2003. This Court, on April 25, 2003 and May 6, 2003 awarded legal fees to the law firm defendants. Petitioner's appeal of this award was withdrawn and dismissed on November 24, 2003.

II. DISCUSSION

A. "Fraud Upon the Court"

Plaintiff seeks relief from this Court's Judgment for Defendants on his copyright claims and its awarding legal fees to Defendants. As the alleged basis for now seeking relief from Orders issued approximately four to six years ago, he asserts that there was a "fraud upon the Court" in reliance upon Federal Rule of Civil Procedure 60(b), which provides no time limit for such a claim.

Professor Hollee Temple argues:

> [T]hat modern-day litigants have, at times, misused the doctrine, which is intended to be applied only in a very narrow set of circumstances, to inject life into time-barred claims. In fact, a number of claims have

> passed through several stages of litigation before finally being unmasked and thrown out by the courts. This practice poses a great threat to the principle of finality in judgments and exposes both opposing parties and the courts to unacceptable expenses.

Hollee S. Temple, Raining on the Litigation Parade: Is It Time to Stop Litigant Abuse of the Fraud on the Court Doctrine?, 39 U.S.F. L. Rev. 967, 969 (2005) (the "Temple Article") (internal footnotes omitted).

Professor Temple could have used the instant motion as a prime example of litigant abuse of the fraud upon the court doctrine. The term "fraud upon the court" within Rule 60(b) is "narrowly construed and is confined to the 'most egregious cases, such as bribery of a judge or juror, or improper influence exerted on the court by an attorney in which the integrity of the court and its ability to function impartially is directly impinged.'" Outen v. Balt. County, 177 F.R.D. 346, 348-49 (D. Md. 1998) (quoting Great Coastal Express, Inc. v. Int'l Bhd of Teamsters, 675 F.2d 1349, 1356 (4th Cir. 1982)).

As stated by Professor Temple:

> A fraud on the court claim hinges on the conduct's effect on the judicial process · the fraud alleged must involve injury to more than a single litigant and must seriously affect the integrity of the adjudication process.[3] Examples include bribery of a jury, jury tampering, or hiring an attorney whose sole value to the case is the attorney's

[3] See 12 James Wm. Moore, et al., Moore's Federal Practice 60.21[4][a] (3d ed. 2004)

> intimate or criminal relationship with the judge.

Temple Article at 975 (footnote in original).

In the instant case, Plaintiff presents nothing to even raise a legitimate question as to the applicability of the fraud upon the court doctrine. Moreover, even if he had, and even if he were somehow found to be entitled to have the case presented by totally different lawyers to a different United States District Judge, it would make absolutely no difference.

In this case, based upon the claims presented, the Court decided that Plaintiff's copyright protection in his unpublished manuscript describing his patricide was not infringed by the limited use (i.e., fair use) of the work as evidence in a state court child custody proceeding. This decision was affirmed by a unanimous panel of the Fourth Circuit. There were no issues as to evidentiary facts that would, by any stretch, affect the ultimate conclusion that the fair use exception of 17 U.S.C. § 107 was applicable. There is no doubt whatsoever that any reasonable judge would, as did the unanimous panel of the United States Court of Appeals for the Fourth Circuit, rule that Plaintiff's claims presented in the instant case were without merit.

It may well be that Plaintiff has claims as to which there would be questions of facts requiring resolution. However, those matters were not presented for decision in the instant case, were not resolved in the instant case and, apparently, have been raised and resolved in other litigation conducted by Plaintiff.

Plaintiff repeatedly has unsuccessfully sought to have the undersigned Judge recuse himself by virtue of a litany of baseless allegations. This Court will not revisit the matter in the context of Plaintiff's "fraud upon the court" claim.

The bottom line is that this Court's decision in the instant case related to Plaintiff's frivolous copyright infringement claim and was affirmed by a unanimous panel of judges of the United States Court of Appeals for the Fourth Circuit.

There is no need for further proceedings relating to Plaintiff's "fraud upon the court" allegation in the instant case. Plaintiff's Rule 60(b) motion shall be denied. Defendants' motion seeking to strike and dismiss Plaintiff's Rule 60(b) motion shall be denied as moot.

B. Discovery

The instant case is closed. There shall be no discovery.

C. Temporary Restraining Order

The instant case is closed; Plaintiff did not establish a copyright violation in the instant case. If Defendants should infringe any rights Plaintiff may have under the copyright law, Plaintiff is free to take legal action in a new lawsuit.

D. Alleged "Criminal" or "Unethical" Acts

The instant case is - more accurately "was" - a civil action brought under the federal copyright law. If Plaintiff has any legitimate basis to contend that there had been any criminal or unethical conduct on the part of anyone connected with the case, he can take action to bring the matter(s) to the attention of

the appropriate criminal prosecutors, attorney grievance and judicial governance bodies. However, the instant case is not the forum for such matters.

E. Motion in Limine

Plaintiff seeks to have this Court prohibit the parties to the instant case and others from use or references in future proceedings to various matters. Of course, this Court does not have jurisdiction over non-parties. As to parties, the Court may have jurisdiction but no basis to take any action in the instant case. Plaintiff's claim that the Defendants had violated his rights under the copyright law was held to be without merit by the trial and appellate courts. Accordingly, this Court shall not issue an Order in the instant case regarding the contents of statements that may be made in future court proceedings.

F. Disqualification

The instant case is closed. None of the attorneys of record that Plaintiff seeks to have disqualified are scheduled to be witnesses in any hearing in the instant case. In the event – not now foreseeable – that there should be some hearing in some forum in which attorneys would be witnesses, the Court presiding over that proceeding would consider the extent to which they would proceed both as counsel and as witness.

G. Permanent Injunction

Plaintiff seeks an injunction restricting Defendants' use of certain matters in connection with the litigation of the instant case and other matters. The instant case is closed and there is nothing to indicate that Defendants would take any

action herein that would violate any rights of Plaintiff. Moreover, Plaintiff has not established any right to have this Court act as a monitor over what Defendants may do in other cases before other judges. If Defendants should violate any rights of Plaintiff in future cases or any other context, Plaintiff is free to take whatever legal action may be appropriate in whatever forum may be available to him.

H. Sanctions

Plaintiff asks this Court to "award all sanctions available that this Court finds justified under the evidence to Plaintiff." This Court finds none.

III. CONCLUSION

For the foregoing reasons:

1. Plaintiff's Motion for Fed.R.Civ.P.60(b) Relief From Judgment or Order [Document 247] IS DENIED.

2. Defendants' Joint Motion to Strike and Dismiss Pro Se Plaintiff William C. Bond's Motion for Relief from Judgment Pursuant to Fed.R.Civ.P.60(b) [Document 265] IS DENIED.

3. Plaintiff's Motion for Discovery, Motion for Discovery of the United States Attorney's Office for Maryland, and Motion for Discovery Under Fed.R.Civ.P. Rule 27 [Document 251] IS DENIED.

4. Plaintiff's Motion for Temporary Restraining Order Until Plaintiff's Renewed Motion to Recuse and Motion for Case to be Specially Assigned to a Visiting

Judge or that the Court Grant a Change of Venue is Granted and the Court Holds a Hearing on Plaintiff's Motion for Permanent Injunction and Restraining Order [Document 245] IS DENIED.

5. Plaintiff's Motion to Refer Criminal Acts to the U.S. Attorney for Maryland and/or the Department of Justice, to Refer Attorney Misconduct to the Maryland Attorney Grievance Commission, and to Refer Judicial Misconduct to the Chief Judge of the 4th Circuit [Document 248] IS DENIED.

6. Plaintiff's Motion in Limine and/or Protective Order [Document 250] IS DENIED.

7. Plaintiff's Motion to Disqualify Attorneys [Document 249] IS DENIED.

8. Plaintiff's Motion for Permanent Injunction and Restraining Order and Request for Hearing [Document 252] IS DENIED.

9. Plaintiff's Motion for Sanctions [Document 247] IS DENIED.

SO ORDERED, on Thursday, July 12, 2007.

/s/
Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL ACTION NO. MJG-01-2600

WILLIAM C. BOND

Plaintiff

vs.

KENNETH BLUM, SR., et al.

Defendants

Entered: May 15, 2007

MEMORANDUM AND ORDER
RE: RECUSAL RECONSIDERATION

The Court has before it Plaintiff's Motion to Reconsider Memorandum And Order Re: Motion to Recuse [Paper 254], and the materials submitted relating thereto. The Court finds that neither a response nor a hearing is necessary. As stated by Judge Ramsey in *Weyerhaeuser Corp. v. Koppers Co., Inc.*: A motion for reconsideration (or, to alter or amend judgment) made pursuant to Fed. R. Civ. P. 59(e) may be made for one of three reasons: (1) an intervening change in the controlling law has occurred, (2) evidence not previously available has become available, or (3) it is necessary to correct a clear error of law or prevent manifest injustice. 771 F. Supp. 1406, 1419 (D. Md. 1991) (citation omitted). None of the circumstances warranting

reconsideration exist and no further discussion is necessary.[1]

Accordingly

1. Plaintiff's Motion to Reconsider Memorandum And Order Re: Motion to Recuse [Paper 254] is DENIED.

2. The Memorandum And Order issued May 1, 2007 remains in effect.

SO ORDERED, on Monday, May 7, 2007.

/ s /
Marvin J. Garbis
United States District Judge

[1] Presumably, if there is appellate review, the appellate court will be provided with the transcript of proceedings on November 20, 2001 including the oral decision and reference to the background video relating to Plaintiff that was placed in evidence.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL ACTION NO. MJG-01-2600

WILLIAM C. BOND
Plaintiff

vs.

KENNETH BLUM, SR., et al.

Defendants

Entered: May 1, 2007

MEMORANDUM AND ORDER RE: RECUSAL

The Court has before it the Renewed Motion to Recuse [Paper 244], the Motion for the Chief Judge to Rule [Paper 243] filed by Plaintiff pro se and the materials submitted relating thereto. The Court finds that neither a response nor a hearing is necessary.

By Memorandum and Order of April 23, 2003 [Paper 108] the Court denied Plaintiff's motion seeking recusal of the undersigned Judge. Plaintiff now renews that motion, adding to the grounds stated therein allegations that:

1. The undersigned Judge was the college roommate of Gerald Messerman, Esquire, at Georgetown University;

2. The undersigned Judge worked on cases together with Mr. Messerman later in life;

3. The undersigned Judge and Mr. Messerman traveled and entertained each other; and

4. Gerald P. Martin, Esquire, counsel for a defendant in the instant case, was a former "partner" with the undersigned Judge.

The Court reiterates herein the statements made and the decision reached in the Memorandum and Order of April 23, 2003. Little supplementation is required.

Pursuant to 28 U.S.C. § 455(a), "[a]ny justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Recusal pursuant to Section 455(a) is required "if a reasonable man, cognizant of the relevant circumstances surrounding a judge's failure to recuse, would harbor legitimate doubts about the judge's impartiality." See United States v. Bremers, 195 F.3d 221, 226 (5th Cir. 2000).

> In other words, "[d]isqualification is required if a reasonable factual basis exists for doubting the judge's impartiality. The inquiry is whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial." (Citation omitted). A presiding judge is not, however, required to recuse himself because of "unsupported, irrational, or highly tenuous speculation." (Internal quotation marks omitted)(Citation omitted).

United States v. Cherry, 330 F.3d 658, 665 (4th Cir. 2003).

There is no basis whatsoever for any reasonable person, knowing the facts, to harbor any legitimate question about the undersigned Judge's impartiality in the instant case. The "facts" asserted by Plaintiff in the renewed motion are either not facts at all or are immaterial.

"College Roommates" - Gerald A. Messerman was not my roommate at "college" or anywhere else. We did not attend the same college or undergraduate law school. In the 1961-62 academic year - Mr. Messerman and I practiced law in the eight lawyer "public defender" office (the E. Barrett Prettyman Fellowship Office) of the graduate school of Georgetown Law School. We were not roommates.

"Worked on cases together later in life" - Mr. Messerman and I - as well as others in the office - worked together on some cases in the 1961-62 academic year. Thereafter, Mr. Messerman became a highly respected Cleveland lawyer to whom I referred clients from time to time over the years. I do not recall working on any case with Mr. Messerman after 1962.

"Traveled and entertained" - As was true on April 23, 2003 and has continued to be true, with one exception, I do not recall traveling or socializing with Mr. Messerman other than at Georgetown Law School events - no more frequently than once every five years since 1962. There was one occasion, in the mid-1990's, when Mr. and Mrs. Messerman met my wife and me in Akron to see a show in which my daughter was performing.

Relationship to case - Finally, Mr. Messerman is neither a party nor counsel in the instant case.

Mr. Martin - I was a member of the Melnicove, Kaufman, Weiner, Smouse and Garbis law firm from 1986 to 1998 as was Joseph Kaufman, Esquire, of Schulman and Kaufman (Plaintiff's counsel in the instant case). Gerald Martin, Esquire, was also a member of the firm. Mr. Martin, Mr. Kaufman and many former members of the Melnicove, Kaufman firm regularly appear before me without any issue being raised regarding recusal.

In sum, I have no concern about my ability to continue to be fair and impartial in this case. Nor do I find any rational basis for a reasonable person - knowing the pertinent facts and circumstances - to have a reasonable basis to doubt my impartiality. Plaintiff's suggestion that the instant motion should be decided by another judge, in particular a judge from outside the District of Maryland, is baseless. As stated in United States v. Savoy, "[a] recusal motion is committed to the sound discretion of the trial judge. Mr. [Bond] has shown no basis to question the impartiality of this or any other district judge in Maryland." 38 F. Supp. 2d 406, 415 (D. Md. 1998).

Accordingly:

1. The Motion for the Chief Judge to Rule [Paper 243] is DENIED.

2. The Renewed Motion to Recuse [Paper 244] is DENIED.

3. The parties shall respond to the pending motions in due course.

SO ORDERED on Tuesday, May 1, 2007.

/s/
Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. JFM-07-1385

WILLIAM BOND *

v.

KENNETH BLUM, SR., ET AL.

Entered: January 18. 2008

SECOND MOTION TO ALTER OR AMEND
ORDER AND MOTION TO RECUSE

Now comes Plaintiff *Pro Se'* under FRCP 59, and any other applicable rules and laws, who incorporates his attached Memorandum in Support of this Motion, and asks this honorable Court to vacate their Orders of June 25, 2007 and January 3, 2008 and to provide Plaintiff all other relief as requested below for the following reasons:

1. This District Court has applied clearly erroneous errors of law and factual analysis to Plaintiff's Case resulting in manifest injustice to Plaintiff.

2. This District Court, despite Plaintiff's request at filing and to Judge Garbis himself, severed this action from its sister case, 01-cv-2600 MJG (hereinafter the "Copyright Case"), now on appeal to the 4th Circuit Court of Appeals. This severing, which is unexplained and not ill line

Denied /s/ J. Frederick Moss 1/17/08

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. JFM-07-1385

WILLIAM BOND

v.

KENNETH BLUM, SR., ET AL.

Entered: January 3, 2008

ORDER

Upon consideration of plaintiff's pending motion to alter or amend order of June 25, 2007 and his pending motion to post an additional exhibit, it is, this 3rd day of January 2008 ORDERED that both the motions be denied.

/s/
J. Frederick Motz
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. JFM1O7-1385

WILLIAM C. BOND

v

KENNETH BLUM SR.
ERLENE BLUM
ALAN S. COHN
ROBIN COHN
KENNETH BLUM JR.
DUDLEY F. B. HODGSON
WILLIAM H. SLAVIN
Wll..LIAM A MCDANIEL JR.
CAROLINE A. GRIFFIN
MCDANIEL, BENNETT & GRIFFIN
MCDANIEL & GRIFFIN
PAUL A. DORF
ADELBERG, RUDOW, DORF &
BENDLER
GERALD P. MARTIN
MIRIAM PESSIN
RENT -A-WRECK OF AMERICA, INC.

Entered: June 26, 2007,

MEMORANDUM

The fee-paid pro se complaint for damages was filed by William C. Bond ("Bond"), a Resident of Baltimore, Maryland Bond sues sixteen defendants including relatives by marriage, private law firms

and partners of same, and an automobile rental company. He claims that a "fraud" has been perpetrated on the court, cites to Fed. R Civ. P. 60(b).and alleges that 17 U.S.C.§ 501, *et seq.* and several provisions of Title 18 have been violated Bond invokes the [1] 28 U.S.C. § 1338(a) jurisdiction of this court.[2] The matter sets out alleged conspiracies among defendants to obtain negative information on Bond by raiding his accounting and legal files and his juvenile police report which culminated in the alleged misappropriation and distribution of his manuscript in a custody battle. Bond raises one count of copyright infringement, three counts of racketeering, and three counts of fraud.

To place some perspective as to the filing of this case, the court shall examine Bond's prior federal civil complaint, the history of which is set out in *Bond v. Blum*, 317 F .3d 385 (4th Cir.2003). In September of 2001, Bond filed a copyright infringement action under 17 U.S.C. § 501 against law firms and their clients, primarily alleging that his autobiographical manuscript was impermissibly appropriated for use in a state court matter between his wife, Alyson Slavin Bond, (nee' Blum), and her

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[1] See 18U .S.C.§ § 1621-231, 512,372,241-42,4021,0 1,2319,1 962&, 1964. These statutes relate to criminal counts of perjury, witness tampering, conspiracy to impede or injure an officer, conspiracy to deprive of rights, contempt, infringement of a copyright, and racketeering, along with civil remedies for prevention, restraint, and recovery of racketeering violations.

[2] Under 28 V.S.C.§ 1338(a) the district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the court of the states in patent, plant variety protection and copyright cases.

former husband, William Slavin, for exclusive custody of their three children[3] See *Bond v. Blum, et al.*, Civil Action No. MJG-01-2600 (D. Md. Plaintiff

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[3] William Bond, formerly known as William Rovtar, was 17 in June of 1981, when he beat his father to death with a hammer in his grandparents garage in Bainbridge Township, Ohio. After Rovtar was arrested and detained in a juvenile detention facility in Ohio, he entered into a guilty-plea agreement in juvenile court with the result that in September 1981, he was transferred to the Sheppard and Enoch Pratt Hospital in Baltimore, Maryland, for psychological treatment. Rovtar was released in 1982. After his release he legally changed his name to *William Bond. See Bond v. Blum*, 317 F.3d 385, 390 (4th Cir. 2003). In 1987, Bond began to write *Self-Portrait of a Patricide: How [Got Away with Murder*," the true story of and by William Bond," which he hoped to market to publishers for profit. The manuscript describes in detail how Bond planned and committed the murder of his father. *Id.* The manuscript has been characterized by Bond as a "highly fictionalized and stylized work" based on his "juvenile experience." *Id.* Bond's effort to find a publisher for the manuscript was not successful and after revisions, a copy of the manuscript was given to Bond's attorney, Norman Pessin, to help obtain publication. This bore no fruit and after Pessin passed away, his widow, Miriam Pessin retained a copy of the manuscript. *Id.* She had the manuscript in 2001, when she was contacted by Dudley Hodgson, a private investigator hired by Bond's wife's father, Kenneth Blum Sr., to look into Bond's background, and she gave the manuscript to Hodgson. *Id.* at 391. Hodgson made a copy of the manuscript and gave it to William Slavin and the attorneys representing him in the custody matter. It was made an exhibit during Alyson Bond's deposition in July of2001, and Slavin's attorneys intended to use it at a hearing scheduled for December 10, 200 I. Id. Bond registered a copy of the manuscript with the Copyright Office in August of 200 I for the sole purpose of preventing further use of manuscript in the custody proceedings. *Id.* On August 29, 2001, he commenced his action for copyright infringement in this court

filed the action against Kenneth Blum Sr.;[4] Dudley F. B. Hodgson;[5] William Slavin; McDaniel, Bennett; & Griffin; Adelberg, Rudow, Dorf & Hendler, LLC; Christopher W. Nicholson; and Kenneth Blum Jr.

On November 27, 200 1, judgment was entered in favor of all defendants and against Bond. Bond's claims were dismissed with prejudice, with assessable costs to be awarded in defendants' favor. The Fourth Circuit affirmed the judgment of the court, but reversed and remanded the matter on the limited issue of the award of attorney fees to defendant law firms. The matter remains pending on this issue and numerous post-judgment motions filed by Bond.

When separating the chaff nom the wheat, the allegations in this case clearly represent Bond's attempt to litigate anew his copyright claims under 17 U.S.C. §§ 501, *et seq.* and/or to vacate and reopen the aforementioned case. Plainly dissatisfied with the decisions previously entered by the district and circuit courts, he invokes this court's copyright jurisdiction and files suit against seven of the defendants named in Bond v. Blum, et al., Civil Action No. MJG-Ol-2600. Three of the newly named defendants are partners in the law firms who were defendants in the earlier case and one of the newly

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[4] Kenneth Blum Sr. and Kenneth Blum Jr are Bond's father-in-law and brother- in-law and are represented by attorney Gerald P. Martin.

[5] S Dudley Hodgson is a private investigator who was hired by Kenneth Blum Sr. to investigate plaintiff after Blum received correspondence from plaintiff which he believed to be attempt to extort money and caused him concern with regard to the safety of his daughter and his grandchildren. See *Bond v. Blum*, 317 F .3d 385, 390 (4- Cir. 2003).

named defendants is counsel for Kenneth Blum Sr., Dudley Hodgson, and Kenneth Blum Jr. In addition, the claims against Alan S. Cohn and Robin Cohen, Kenneth Blum Sr.'s son-in-law and daughter, as well as Bond's claims against his mother-in-law Erlene Blum and Miriam Pessin, are inextricably related to *Bond v. Blum*, et al., Civil Action No. MJG-01-2600.[6]

Plaintiff is estopped from re-litigating his claims. The doctrine of *res judicata* or claim preclusion provides that a final judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based upon the same cause of action. See *Jones v. SEC*, 115 F .3d 173, 1178 (4th Cir. 1997); *Keith v. Aldridge*, 900 F.2d 736, 739 (4th Cir. 1990); *Nash County Rd. of Ed. v. Biltmore Co.*, 640 F.2d 484, 485 (4th Cir. 1981). The doctrine of collateral estoppel precludes the relitigation of issues actually litigated; the matters must have been distinctly placed at issue and directly determined in prior proceedings in which the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate. *See In re: Microsoft Corp. Antitrust Litigation*, 355 F.3d 322, 325-26 (4th Cir. 2004).

The principles of *res judicata* and collateral estoppel apply to this action. *See Allen v. McCurry*, 449 U.S. 90, 105 (1980). Federal law controls the assessment of the preclusive effect of the earlier federal judgment was entered as to plaintiff's copyright claims; the parties are identical or in

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[6] It is unclear why defendant Rent-A-Wreck of America Inc., is subject to suit in this case. Bond claims that Rent-A-Wreck paid Dudley Hodgson's salary as an investigator for the Office of the Attorney General

privity;[7] and the claims in the who suits are sufficiently identical as to arise out of the same series of transactions and/or could have been filed in the first suit, Bond is precluded from repackaging his adjudicated copy right claims against defendants. *See Meekins v. United Transportation Union*, 946 F.2d 1054, 1057-58 (4th Cir. 1991); *Keith v. Aldridge*, 900 F.2d at 740.

In addition, Bond levels charges of "racketeering" and fraud with regard to alleged declarations and perjury committed in *Bond v. Blum, et al.*, Civil Action No. MJG-Ol-2600 After thorough review of the complaint and applicable statute under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), this court finds that Bond's spectaculacr l aims fail to provide a sufficient factual basis for alleging a pattern of "racketeering activity" in order to set out a claim against defendants for civil violation of RICO Further, his claims of "fraud" go directly to the factual evidence presented in *Bond v. Blum, et al.*, Civil Action No. MJG-Ol-2600. Bond may not do circuitously what he cannot do directly-re-litigate the factual findings and credibility determinations made in the earlier civil action.

Plaintiff paid the filing fee. Nonetheless it is well established that a court has broad, inherent power *sua sponte* to dismiss an action, or part of an action, which is frivolous, vexatious, or brought in bad faith. *See Fitzgerald v. First East Seventh Street Tenants Corp.*, 221 F .3d 362, 363-64 (2d Cir. 2000) (district courts have the authority to dismiss frivolous

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[7] Bond cannot avoid the bar of *res judicata* simply by adding new defendants to the second suit. *See Dreyfus v. First Nat'l Bank of Chicago*, 424 F.2d 1171, 1175 (7th Cir. 1970).

complaint *sua sponte*, notwithstanding the payment of the filing fee); *Crowley Cutlery Co. v. United States*, 849 F .2d 273,277 (7th Cir. 1988)(federal district judge has authority to dismiss a frivolous suit on her own initiative); *Brown v. District Unemployment Compensation Board*, 411 F. Supp 1001 (D.C. 1975) (district court has inherent power to control the judicial process and dismiss frivolous or harassing action *sua sponte*). Therefore, this court has the discretion to dismiss a case at any time, notwithstanding the payment of any filing fee or any portion thereof, if it determines that the action is factually or legally frivolous. The court finds that the instant matter is subject to dismissal. A separate order effecting the rulings made in this memorandum is being entered herewith.

/s/ J. Federick Motz
United States District Court

Dated June 26, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. JFM-07-1385

WILLIAM BOND

v.

KENNETH BLUM, SR., ET AL.

Entered: June 26, 2009

ORDER

For the reasons stated in the memorandum entered herewith, it is this 26th day of June, 2007

ORDERED

1 The above-captioned complaint IS DISMISSED pursuant to Fed. R. Civ. P 12(b)(6) for the failure to state a claim; and

2 This action is dismissed.

/s/
J. Frederick Motz
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL ACTION NO. MJG-01-2600

WILLIAM C. BOND

Plaintiff

vs.

KENNETH BLUM, SR., et al.

Defendants

Entered: April 24, 2003

MEMORANDUM AND ORDER

The Court has before it Defendant Adelberg, Rudow, Dorf & Hendler, LLC's Motion Requesting Attorney's Fees Under 17 U.S.C. § 505 [Paper 36]; Defendant Adelberg, Rudow, Dorf & Hendler, LLC's [Post-trial] Motion Requesting Attorney's Fees Under 17 U.S.C. § 505 [Paper 83], Defendant McDaniel, Bennett & Griffin's Motion for Award of Attorney's Fees and Expenses [Paper 38]; Defendant McDaniel, Bennett & Griffin's [Post-trial] Motion Requesting Attorney's Fees and Expenses on Appeal [Paper 82] and the materials submitted relating thereto. The Court finds that a hearing is unnecessary.

I. BACKGROUND

The pertinent background is provided in the decision of the United States Court of Appeals for

the Fourth Circuit in Bond v. Blum, 317 F.3d 385 (4th Cir. 2003). It suffices here to note that Plaintiff William C. Bond is the husband of Alyson Bond (formerly Slavin, nee Blum), a party in a child custody dispute in State Court, Slavin v. Slavin, Case No. 95249006/CE 201677 (Cir. Ct. Balt. City, Md.) The Defendants obtained a copy of a manuscript written by Plaintiff describing how he killed his father and "prevailed" in judicial proceedings relating thereto.

In the instant case, Plaintiff sought to enforce alleged rights in the manuscript under the Federal Copyright Act to prevent the use of the manuscript as evidence in the custody dispute. This Court denied Plaintiff's claims against all Defendants and awarded legal fees to the individual Plaintiffs, denied legal fees to the law firm Defendants on the ground that the Court lacked discretion to do so, and denied Rule 11 Sanctions. On January 24, 2003, the Fourth Circuit affirmed the denial of Plaintiff's claims and the award of legal fees to the individual Defendants, but held that the Court did have discretion to award legal fees to the Defendant law firms and should reconsider the denial of sanctions in light of a recent decision. The appellate court has remanded the case

- "to authorize, but not require the district court to award[17 U.S.C.] §505 fees if it determines, in its discretion to do so" [Id. at 400], and
- to reconsider Defendants' sanctions motion in light of a recent decision.

II. LEGAL FEE AWARDS

A. Should There Be Awards

The Copyright Act, 17 U.S.C. § 505 provides that:

> the court in its discretion may allow the recovery of full costs by or against any party. . . . Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

In Diamond Star Bldg. Corp. v. Sussex Co. Builders, Inc., 30 F.3d 503 (4th Cir. 1994), the Fourth Circuit held that attorney's fees and costs need not be awarded as a matter of course under § 505. Rather the trial court must exercise its discretion in light of appropriate factors. As stated in Diamond Star:

> In Rosciszewski v. Arete Assocs., Inc., 1 F.3d 225, 233-34 (4th Cir. 1993)] this court adopted the following factors to guide a district court in determining whether to award attorney's fees and costs to a prevailing party under § 505: (1) "the motivation of the parties," (2) "the objective reasonableness of the legal and factual positions advanced," (3) "'the need in particular circumstances to advance considerations of compensation and deterrence,'" and (4) "any other relevant factor presented."

Diamond Star at 505.

In the Memorandum and Order issued February 6, 2002 ("the M&O"), the Court discussed the pertinent factors and herein reiterates, without repetition, that discussion. In the M&O, the Court

decided to award legal fees to the individual Defendants. As to the law firm Defendants, the Court predicted that, in view of the state of the precedents then existing, the Fourth Circuit would not permit an award to "pro se" law firms, that is, firms represented by members and employees of the firm. The Court stated, however, that if it had discretion to award counsel fees to the law firm Defendants, it would make such awards, although reducing the amount to reflect the lesser amount of professional time that would have been expended by independent counsel.

On appeal, the Fourth Circuit stated:

> Though representation of a law firm by one of its members presents an increased risk of emotional involvement and loss of independence, the law firm still remains a business and professional entity distinct from its members, and the member representing the firm as an entity represents the firm's distinct interests in the agency relationship inherent in the attorney-client relationship. Although a given representation of a law firm by one or more of its members could suffer from a lack of independence, there is no indication in this case of a relationship that tended to distort independent judgment, as existed in Doe v. Board of Education of Baltimore County, 165 F.3d 260 (4th Cir. 1998).
>
> Because the district court indicated that it was inclined to award the law firm defendants fees, although not all the fees requested, and would have done so but for the pro se

> prohibition, we now remand this case to authorize, but not require, the district court to award § 505 fees if it determines, in its discretion, to do so.

Bond v. Blum, 317 F.3d 385, 400 (4th Cir. 2003).

This Court finds no reason to change its conclusion that it should exercise discretion to award legal fees for the Defendant law firms. Therefore, as authorized by the Fourth Circuit, the Court shall do so.

B. Amount of Awards

Plaintiff presents, as justification for reducing or eliminating the legal fee awards, yet another batch of arguments, or restatements of arguments, on the merits of the case. This Court, and the appellate court, found the Plaintiff's claims to be meritless. The new, or restated, arguments as to why this Court and the Fourth Circuit were wrong has no effect upon the legal fee award.

Furthermore, Plaintiff's efforts to characterize the instant case as a close one are unavailing. There may have been difficulties encountered in ascertaining the precise nature of the issues presented in the barrage of Plaintiff's allegations. Nevertheless, once exposed to the light of clarity, Plaintiff's claims were baseless. In any event, an award of legal fees under 17 U.S.C. § 505 is not a sanction to be imposed only against the taking of purely frivolous positions.

Plaintiff did not address, with particularity, Defendants' evidence relating to their requests. Plaintiff instead sought to rely upon sweeping generalities. The Court will, nevertheless, undertake

a detailed review of the evidence to determine the proper amount to award to law firm Defendants.

1. The Rates to Use

It is appropriate to determine the amount of any legal fee award by reference to professional time allowed multiplied by reasonable hourly rates. Plaintiff has presented no valid reason for the Court to reject the Defendants' positions with regard to the hourly rates for their respective professionals.[1] The Court, therefore, finds the claimed hourly rates to be reasonable.

2. Time Charges to Allow

Plaintiff's generalized objections to Defendant's submissions are unpersuasive. The fact that the individual Defendants were awarded far less than the amounts claimed by the law firm Defendants does not warrant a reduction of the latter's claim to the extent valid. Indeed, it appears that counsel for the individuals allowed law firm counsel to do most of the work.

Plaintiff does not specifically address, in detail, the charges claimed by Defendant. Instead, he presents general objections to "double team billing." The Court accepts the proposition that unreasonable billing for duplicative effort and for at least some of the conferences between and among counsel should be disallowed.

The Court will also, albeit without the benefit of a detailed submission by Plaintiff in this regard,

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[1] The Court finds Plaintiffs' arguments to reduce the rates unavailing. Indeed, certain of the rates charged, for example, for Mr. Ryan, were rather modest.

disallow such professional time as the Court finds to be in excess of that which would be billed to a fee-paying client.

The Court's decision is summarized by reference to the charts appended hereto. Counsel are also being provided copies of the underlying records with markings thereon indicating what has been disallowed.

3. Amount of Awards

a. Adelberg, Rudow

INVOICE	FEES	EXPENSES
November 20, 2001	$21,379.00	$ 85.50
December 31, 2001	8,222.50	2,138.23
December 31, 2002	30,556.40	9,192.54
	$60,157.90	$11,416.27

Adelberg, Rudow Total

Fees	$60,157.90
Expenses	11,416.27
	$71,574.17

b. McDaniel, Bennett

(1) Trial Level Law Firm Billing

Fees	$37,795.00
Expenses	7,355.99
Total	$45,150.99

(2) Appeal - Outside Counsel Billing

INVOICE	FEES	EXPENSES
April 25, 2002	$ 6,775.00	$ 222.06
June 19, 2002	13,527.00	168.74
July 9, 2002	3,828.00	217.00
August 9, 2002	1,955.00	76.14
September 23, 2002	297.50	62.88
October 21, 2002	315.00	13.19
December 4, 2002 (#1)	8,806.00	256.32
December 4, 2002 (#2)	0	349.64
January 24, 2003	0	214.89
February 14, 2003	340.50	38.64
March 10, 2003	990.00	63.16
	$36,834.00	$1,682.66

Fees	$36,834.00
Expenses	1,682.66
Total	$38,516.66

McDaniel, Bennett Total

Trial Level	$45,150.99
Appeal	39,516.66
	$83,667.65

II. CONCLUSION

For the foregoing reasons:

1. Defendant Adelberg, Rudow, Dorf & Hendler, LLC's Motion Requesting Attorney's Fees Under 17 U.S.C. §505 [Paper 36] is GRANTED.

2. Defendant Adelberg, Rudow, Dorf & Hendler, LLC's [Post-trial] Motion Requesting Attorney's Fees Under 17 U.S.C. §505 [Paper 83] is GRANTED.

3. Defendant McDaniel, Bennett & Griffin's Motion for Award of Attorney's Fees and Expenses [Paper 38] is GRANTED.

4. Defendant McDaniel, Bennett & Griffin's [Post-trial] Motion Requesting Attorney's Fees and Expenses on Appeal [Paper 82] is GRANTED.

5. Defendant Adelberg, Rudow, Dorf & Hendler, LLC shall recover from Plaintiff pursuant to 17 U.S.C. §505 the amount of $71,574.17.

6. Defendant McDaniel, Bennett & Griffin shall recover from Plaintiff pursuant to 17 U.S.C. §505 the amount of $83,667.65.

7. A Supplemental Judgment shall be entered by separate Order.

SO ORDERED, on Thursday, April 24, 2003.

/ s /
Marvin J. Garbis
United States District Judge

A R D & H
November 20, 2001 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Alion	7.6	4.5	3.1	165	511.5
Radding	45.7	19.7	26	275	7150
McKinney	88.0	31.6	56.4	220	12408
Glidden	3.4		3.4	80	272
Severino	9.5	1.2	8.3	125	1037.5
Hendler					
Lurie					
Dorf					
Mazumder					
Glidden					
Thompson					
Clerk					
Ades					
Kline					
Jones					
Cooper					
Total Award					21379

Expenses:	$ 150.00
Less:	64.50
Allowed	$ 85.50

A R D & H

December 31, 2002 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Alion			0		0
Radding	7.4	5.4	2	275	550
McKinney	46.9	17.4	29.5	220	6490
Glidden	17.7	6.9	10.8	80	864
Severino			0		0
Hendler			0		0
Lurie	.6	0	0.6	260	156
Dorf	2.0	1.5	0.5	300	150
Mazumder	.1	0	.1	125	12.5
Glidden					
Thompson					
Clerk					
Ades					
Kline					
Jones					
Cooper					
Total Award					8222.5

Expenses:	$2,303.73
Less:	165.50
Allowed	$2,138.23

A R D & H
December 31, 2002 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Alion	1.8	1.8	0	165	0
Radding	49.3	19.5	29.8	285	8493
McKinney	31.9	15.0	16.9	220	3718
Glidden	15.7	11.0	4.7	80	376
Severino	252.4	115.0	137.4	125	17175
Hendler	1.6	1.6	0	295	0
Lurie			0		0
Dorf	5.0	5.0	0	300	0
Mazumder			0		0
Glidden					
Thompson	.1	.1	0	95	0
Clerk	.3	.3	0	30	0
Ades	4,4	3.1	1.3	123	159.9
Kline	6.7	4.0	2.7	135	364.5
Jones	2.3	2.3	0	145	0
Cooper	10.3	7.3	3	90	270
Total Award					30556.4

Expenses:	$9,397.54
Less:	195.00
Allowed	$9.192.54

McDaniel, B & G Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Bennett	2.0	2.0	0	250	0
Graf	77.0	25.8	51.2	100	5120
Griffin	47.8	41.9	5.9	250	1475
McDaniel	175.5	71.5	104	300	31200
Total Award					37795

Expenses $ 7,740.59
Less 384.60
Allowed $ 7,355.99

Whiteford Taylor & Preston
April 25, 2002 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	51.2	10.4	40.8	145	5916
Ryan	3.2	.1	3.1	175	542.5
Hagigh	.1		0.1	130	13
Bassett	.8		0.8	130	104
Keys	2.0		2	100	200
Jasani				0	0
Warfield				0	0
Powers				0	0
Total Award					6775.5

Expenses $222.06

Whiteford Taylor & Preston
June 19, 2002 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	73.1	9.5	63.6	145	9222
Ryan	26.9	2.3	24.6	175	4305
Hagigh			0		0
Bassett			0		0
Keys			0		0
Jasani			0		0
Warfield			0		0
Powers			0		0
Total Award					13527

Expenses $168.74

Whiteford Taylor & Preston
July 9, 2002 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	10.9	0	10.9	145	1580.5
Ryan	11.7	0	11.7	175	2047.5
Hagigh			0		0
Bassett			0		0
Keys			0		0
Jasani	1.3	0	1.3	125	162.5
Warfield	.3	0	0.3	125	37.5
Powers			0		0
Total Award					3828

Expenses	$943.00
Disallow	726.00
Allow	$217.00

Whiteford Taylor & Preston
August 9, 2002 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	11.4	1.9	9.5	145	1377.5
Ryan	3.3	0	3.3	175	577.5
Hagigh			0		0
Bassett			0		0
Keys			0		0
Jasani			0		0
Warfield			0		0
Powers			0		0
Total Award					1955

Expenses $76.14

Whiteford Taylor & Preston
September 23, 2002 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew			0		0
Ryan	1.8	.1	1.7	175	297.5
Hagigh			0		0
Bassett			0		0
Keys			0		0
Jasani			0		0
Warfield			0		0
Powers			0		0
Total Award					297.5

Expenses $62.88

Whiteford Taylor & Preston
October 21, 2002 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	.5	.5	0	145	0
Ryan	1.8	0	1.8	175	315
Hagigh			0		0
Bassett			0		0
Keys			0		0
Jasani			0		0
Warfield			0		0
Powers			0		0
Total Award					315

Expenses $13.19

Whiteford Taylor & Preston
December 4, 2002 Invoice (1 of 2)

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	37.1	37.1	0	145	0
Ryan	36.8	0	36.8	175	6440
Hagigh			0		0
Bassett			0		0
Keys			0		0
Jasani			0		0
Warfield			0		0
Powers	18.2	0	18.2	130	2366
Total Award					8806

Expenses $256.32

Whiteford Taylor & Preston
December 4, 2002 Invoice (2 of 2)

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew		0			0
Ryan	.2	.2	0	175	0
Hagigh					0
Bassett					0
Keys					0
Jasani					0
Warfield					0
Powers					0
					0
Total Award					0

Expenses $349.64

Whiteford Taylor & Preston
January 24, 2003 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	.1	.1	0	145	0
Ryan			0		0
Hagigh			0		0
Bassett			0		0
Keys			0		0
Jasani			0		0
Warfield			0		0
Powers			0		0
Total Award					0

Expenses	$ 459.78
Disallow	244.89
Allow	$ 214.89

Whiteford Taylor & Preston
February 14, 2003 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	1.5	.6	0.0	145	130.5
Ryan	1.2	0	1 2	175	210
Hagigh			0		0
Bassett			0		0
Keys			0		0
Jasani			0		0
Warfield			0		0
Powers			0		0
Total Award					340.5

Expenses $38.64

Whiteford Taylor & Preston
March 10, 2003 Invoice

Time-keeper	Hours	Dis-Allowed	Allowed	Rate	Amount Allowed
Askew	6.5	1.0	5.5	145	797.5
Ryan	1.1	0	1.1	175	192.5
Hagigh					
Bassett					
Keys					
Jasani					
Warfield					
Powers					
Total Award					990

Expenses $63.16

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL ACTION NO. MJG-01-2600

WILLIAM C. BOND

Plaintiff

vs.

KENNETH BLUM, SR., et al.

Defendants

Entered: April 24, 2003

SUPPLEMENTAL JUDGMENT ORDER

By separate Order issued this date, the Court has granted motions awarding expenses, including legal fees, to the law firm Defendants.

Accordingly:

1. This Supplemental Judgment shall be, and hereby is, entered.
2. Defendant Adelberg, Rudow, Dorf & Hendler, LLC shall recover from Plaintiff William C. Bond the amount of $71,574.17 plus judgment interest thereon.
3. Defendant McDaniel, Bennett & Griffin shall recover from Plaintiff William C. Bond the amount of $83,667.65 plus judgment interest thereon.

SO ORDERED, on Thursday, 24 April, 2003.

/ s /
Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CIVIL ACTION NO. MJG-01-2600

WILLIAM C. BOND

Plaintiff

vs.

KENNETH BLUM, SR., et al.

Defendants

Entered April 24, 2003

MEMORANDUM AND ORDER

The Court has before it Plaintiff's Motion to Recuse and the materials submitted relating thereto. The Court finds that a hearing is unnecessary.

I. FACTS

In 1961, the second year of the E. Barrett Prettyman Fellowship program, Georgetown Law School selected eight law school graduates for a "legal internship." The legal interns practiced law as public defenders in a storefront office on Fifth Street in Washington D.C. under the supervision of a then-young professor, George Shadoan. The interns had the great benefit of trying cases as court-appointed counsel in the D.C. courts under the supervision of George Shadoan and attending formal classes at the law school leading to a post graduate L.L. M. degree. The undersigned Judge, Gerald Messerman of

Cleveland, Ohio and six others were fortunate enough to be the Prettyman Fellows for the 1961-62 year.

During that year, the interns worked together on cases, observed each others' trial performances, and learned from each other. In the 41 years since graduation from Georgetown in 1962, I have seen Mr. Messerman on rare occasions, only which I can specifically recall was not part of a law school reunion.[1] While in practice, I had infrequent professional contact with Mr. Messerman. I always had the highest respect for him and made recommendations of him to people who, from time to time, needed to engage counsel in Cleveland. In sum, Mr. Messerman is one of the many excellent lawyers with whom I have had the privilege of practicing during my career. Many of those former colleagues have practiced before me[2] and, should occasion arise, Mr. Messerman would be welcome to do so also.

When assigned the instant case in August of 2001, I noted that Plaintiff's criminal counsel in Cleveland had been Mr. Messerman. This fact was of no moment to me whatsoever.

On November 26, 2001, I entered Judgment for Defendants based upon my rulings on the merits of the case. I note, from Plaintiff's papers, that on

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[1] In the mid-1990's, on an occasion when my wife and I were meeting a family member in Akron, Ohio, we had dinner and saw a show with Mr. Messerman and his wife. This is my only non law school related post graduation social contact with Mr. Messerman that I recall.

[2] Including Joseph Kaufman of Schulman and Kaufman, counsel for Plaintiff in the instant case.

approximately November 27, 2001, Plaintiff met with Mr. Messerman who told Plaintiff of his connection with me. On December 27, 2001, I denied Plaintiff's Motion to Alter or Amend Judgment. On February 6, 2002 I held that the individual Defendants would recover legal fees from Plaintiff, stated that I would have awarded legal fees to the law firm Defendants had I believed I had discretion to do so, and denied Rule 11 sanctions.

The case was appealed to the United States Court of Appeals for the Fourth Circuit. On January 24, 2003, the Fourth. Circuit affirmed judgment for the Defendants on the substantive merits. Bond v. Blum, 317 F.3d 385 (4th Cir. 2003). The appellate court further held that I did have discretion to award legal fees to the Defendant law firms and should reconsider the denial of sanctions in light of a recent decision.

On approximately January 31, 2003, Plaintiff sued Mr. Messerman in the Circuit Court for Baltimore City. In broad terms, Plaintiff claimed that Mr. Messerman had not properly represented him.

The instant case is now before me on remand to decide upon a legal fee award for the law firm Defendants and the award of any sanctions under Rule 11.

II. DISCUSSION

The Court will disregard any issues presented by virtue of the timing of the instant motion. See e.g Satterfield v. Edenton-Chowan Bd. of Ed., 530 F.2d 567, 575-75 (4th Cir. 1975) (" [o]ne must raise the disqualification of the. . . [judge] at the earliest

moment after knowledge of the facts [allegedly evincing bias]"). Accordingly, the Court will assume that the alleged disqualifying event occurred on January 31, 2003 when Plaintiff sued Mr. Messerman and, therefore, the instant motion was timely filed.

The disqualification statute, 28 U.S.C. § 455, provides, in pertinent part:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Recusal pursuant to Section 455(a) is required "if a reasonable man, cognizant of the relevant circumstances surrounding a judge's failure to recuse would harbor legitimate doubts about the judge's impartiality." See United States v. Bremers, 195 F.3d 221, 226 (5th Cir. 2000).

The instant case does not present a close question. The fact that Mr. Messerman had been Plaintiff's counsel in the underlying criminal case had no effect, nor the appearance of any effect, on this judge's decision prior to the appeal. Most judges who had been in an active law practice regularly decide cases in which the parties include present (and former) clients of former colleagues.

The fact that Plaintiff has sued Mr. Messerman in regard to his representation of Plaintiff in the criminal case does not change the situation. Mr. Messerman is not a party to the instant case. Moreover, the Court's decision on the only issues presented – the making of any award for legal fees and sanctions – would have no effect whatsoever on

Mr. Messerman. In sum, this Court is not influenced, and would not appear to a reasonable informed person to be influenced, by the fact that the Plaintiff has sued an attorney with whom the judge had practiced law for one year more than forty years ago and who the judge has seen socially approximately once every five years or so since then.

III. CONCLUSION

For the foregoing reasons:

1. Plaintiff's Motion to Recuse is DENIED.

2. The Court shall proceed to decide the pending matters.

SO ORDERED, on Thursday. April 23. 2003.

/ s /
Marvin J. Garbis
United States District Judge

PUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-1139

WILLIAM C. BOND,

Plaintiff-Appellant,

v.

KENNETH BLUM, SR.; KENNETH BLUM, JR.;
DUDLEY F. B. HODGSON;
MCDANIEL, BENNETT & GRIFFIN; ADELBERG,
RUDOW, DORF & HENDLER, LLC;
CHRISTOPHER W.NICHOLSON;
WILLIAM SLAVIN,

Defendants-Appellees.

No. 02-1219

WILLIAM C. BOND,

Plaintiff-Appellee,

v.

ADELBERG, RUDOW, DORF
& HENDLER, LLC,

Defendant-Appellant,

and

KENNETH BLUM, SR.; KENNETH BLUM, JR.;
DUDLEY F. B. HODGSON;
MCDANIEL, BENNETT & GRIFFIN,

Defendants.

No. 02-1231

WILLIAM C. BOND,

Plaintiff-Appellant,

v.

ADELBERG, RUDOW, DORF
& HENDLER, LLC,

Defendant-Appellee,

and

KENNETH BLUM, SR.; KENNETH BLUM,JR.;
DUDLEY F. B. HODGSON;
MCDANIEL, BENNETT & GRIFFIN,

Defendants.

No. 02-1288

WILLIAM C. BOND,

Plaintiff-Appellee,

v.

MCDANIEL, BENNETT & GRIFFIN,

Defendant-Appellant,

and

ADELBERG, RUDOW, DORF & HENDLER, LLC;
KENNETH BLUM, SR.;
KENNETH BLUM, JR.; DUDLEY F. B.HODGSON,

Defendants.

Appeals from the United States District Court
for the District of Maryland, at Baltimore.
Marvin J. Garbis, District Judge.

(CA-01-2600-MJG)

Argued: October 31, 2002

Entered: January 24, 2003

Before NIEMEYER, WILLIAMS, and MICHAEL, Circuit Judges.

Affirmed in part and vacated and remanded in part by published opinion. Judge Niemeyer wrote the opinion, in which Judge Williams and Judge Michael joined.

COUNSEL

ARGUED: Howard J. Schulman, SCHULMAN & KAUFMAN, L.L.C., Baltimore, Maryland, for Appellant. William Fitts Ryan, Jr., WHITEFORD, TAYLOR & PRESTON, L.L.P., Baltimore, Maryland; Andrew Radding, ADELBERG, RUDOW, DORF & HENDLER, L.L.C., Baltimore, Maryland, for Appellees. ON BRIEF: Amy E. Askew, WHITEFORD, TAYLOR & PRESTON, L.L.P., Baltimore, Maryland; J. Andrew McKinney, ADELBERG, RUDOW, DORF & HENDLER, L.L.C., Baltimore, Maryland; Gerard P. Martin, Thy C. Pham, MARTIN, SNYDER & BERNSTEIN, P.A., Baltimore, Maryland; Kathryn M. Goldman, JIRANEK, GOLDMAN & MINTON, L.L.C., Baltimore, Maryland, for Appellees.

OPINION

NIEMEYER, Circuit Judge:

On a motion for summary judgment filed in this copyright infringement action, the district court held that the defendants' copying of a copyrighted manuscript for introduction into evidence in a state court child-custody proceeding constituted a "fair use" of the manuscript under the Copyright Act, 17

U.S.C. § 107, when the substance of the manuscript was relevant to the issues in the child-custody proceeding and the defendants' use of the manuscript was solely for its content and not for its mode of expression. The district court also awarded attorneys fees, under 17 U.S.C. § 505, to the prevailing *individual* defendants but not to the law-firm defendants because the law firms were represented by a member of the firm and thus were acting *pro se*.

For the reasons given in this opinion, we affirm the district court's summary judgment and its award of attorneys fees to the individual defendants, and we remand for reconsideration of the law-firm defendants' motion for attorneys fees.

I

In the child-custody case of *Slavin v. Slavin*, commenced in July 2000 and pending in the Circuit Court for Baltimore City, Case No. 95249006/CE 201677, Alyson Slavin Bond sued her former husband, William Slavin, for exclusive custody of their three children. William Slavin filed a cross-petition for exclusive custody and, in support of his position, introduced into evidence an autobiographical manuscript written by Alyson's current husband, William Bond, to establish that the home of Alyson and William Bond would not be a suitable place for the three children. Bond's manuscript was entitled *Self-Portrait of a Patricide: How I Got Away with Murder*.

In June 1981, when William Bond, who was formerly known as William Rovtar, was 17, he beat his father to death with a hammer in his grandparents' garage in Bainbridge Township, Ohio.

After Rovtar was arrested and detained in a juvenile detention facility in Ohio, he entered into a guilty-plea agreement in juvenile court with the result that in September 1981 he was transferred to the Sheppard & Enoch Pratt Hospital in Baltimore, Maryland, for psychological treatment. Rovtar was released in 1982, and after his release, he legally changed his name to William Bond. He remained in Maryland and thereafter became employed as a tennis instructor at a country club, a bicycle salesman, and a bodyguard, among other things.

In 1987, Bond began to write *Self-Portrait of a Patricide: How I Got Away with Murder*, "the true story of and by William Bond," which he hoped to market to publishers for profit. The manuscript describes in horrific detail how Bond planned and committed the murder of his father with a hammer, and how his dying father attempted to raise himself off the floor of the garage before Bond delivered the final blows to his neck and head. It describes Bond wiping away his fingerprints, scrubbing the garage floor, cleaning blood, flesh, and bone from his clothes, and stuffing his father's dead body in his car's trunk. Most sinister of all, it depicts a remorseless individual who brags about fooling the police and the juvenile system to "get away scot-free" and even collecting, as planned, the money from his father's estate. Although verifiable facts of the murder are consistent with the details provided in the manuscript, Bond has now stated in an affidavit that the manuscript is "a highly fictionalized and stylized work," based on his "juvenile experience." Bond circulated his manuscript directly and through agents in order to find a publisher, asking for a seven-figure advance. His efforts, however, were

unsuccessful. After some revisions, Bond also gave a copy of the manuscript to Norman Pessin, an attorney who had represented Bond in various unrelated matters, to help him get the manuscript published, but his efforts, too, failed. Although Pessin thereafter died, his widow retained a copy of the manuscript.

Bond met Alyson Slavin in early 1995, after Alyson was separated from her husband, William Slavin. Bond and Alyson continued to see each other until they married in May 2001. In 1996, shortly after Bond and Alyson met, Bond wrote a lengthy letter to Alyson's father, Kenneth Blum, Sr., indicating that he intended to marry Alyson and become the stepfather of her children. The letter offered an analysis of individual members of Blum's family and purported to offer "solutions" to correct perceived deficiencies in the Blum-Slavin extended family. In addition, the letter set forth an expansive financial plan, pursuant to which Bond demanded from Blum a dowry, a salary, establishment of an investment account, purchase of a studio apartment in addition to a house, and a severance package should Bond's marriage with Alyson not work out. Bond stated to Blum, "You can pay me now or pay me later." In this letter, Bond also made reference to his personal history, stating that he "had a past," and that, although it was "none of [Blum's] business," it makes "interesting reading."

Blum not only found this letter very disconcerting, considering it to be an attempt to extort money from him, but he also became concerned for the safety of Alyson and her children. In June 2000, just before the state custody action was commenced, Blum hired a private investigator,

Dudley F. B. Hodgson, to look into Bond's background. At their first meeting, Blum gave Hodgson an overview of his dealings with Bond and expressed his concern over both the safety of his grandchildren and Bond's effort to "shake him down" for money. Blum gave Hodgson a copy of the letter that Bond had sent him and told Hodgson that he had heard that Bond may have had some problems with his family involving violence in Ohio.

In the course of his investigation, Hodgson learned about the murder of Bond's father and contacted the Bainbridge, Ohio police department, obtaining copies of the police report and other documents relating to the homicide investigation. Hodgson reported these findings to Blum, and at Blum's request, Hodgson went to the home of Miriam Pessin, the widow of Norman Pessin, believing that Bond had also tried to "shake Pessin down" for money before he died. When Hodgson interviewed Miriam Pessin in April 2001 and asked her if she had any information that would be helpful in his investigation of Bond, she told Hodgson that she did have, stored in a box, a looseleaf copy of a manuscript that Bond authored. Mrs. Pessin stated that Bond had given a copy of the manuscript to her husband for him to read for the purposes of locating a publisher. She later testified that this box of materials was not part of Pessin's legal files, which he carefully kept separate, and that Bond had also given her portions of the manuscript to read. Not wanting to retain the manuscript in her home, Mrs. Pessin gave it to Hodgson. Hodgson made a copy of the manuscript and gave copies to Alyson's ex-husband, William Slavin, and the attorneys representing him in the state custody action.

William Slavin's attorneys made the manuscript an exhibit during the deposition of Alyson in July 2001 and intended to make it a part of the custody litigation in the Circuit Court for Baltimore City, in which a hearing was scheduled for December 10, 2001. For the sole purpose of preventing further use of the manuscript in the proceedings before the Baltimore City Circuit Court, Bond registered a copy of his manuscript with the Copyright Office in August 2001.

Immediately after registering the manuscript, Bond commenced this action for copyright infringement, naming as defendants Blum, Blum's son, Hodgson, William Slavin, and Slavin's attorneys. He requested a preliminary and permanent injunction prohibiting the use of the manuscript by the defendants for any purpose and requiring the return of all existing copies.

At the hearing on Bond's motion for a preliminary injunction, the district court heard testimony from Alyson Bond, Blum, Hodgson, and Mrs. Pessin, among others. Following the hearing, the court found that Bond had written the manuscript and had delivered it to Pessin and others in an effort to get it published. The court found that Pessin's efforts to get the book published were not "part of [Pessin's] legal practice, because he wasn't doing this as a lawyer." The court concluded that the document was not "a confidential document in any kind of privileged sense." In addition, the court found that Hodgson did not steal the document but was given the document by Pessin's wife.

On the merits of the copyright infringement issue, the court evaluated the defendants' defense of

"fair use" by applying the four factors set forth in 17 U.S.C. § 107. The court concluded that (1) the purpose and character of the defendants' anticipated use of the manuscript was not one against which the Copyright Act sought to protect; (2) the nature of the manuscript did not weigh against the finding of a "fair use"; (3) the defendants were seeking to introduce the entire manuscript, which weighed against a finding of fair use; and (4) the use would have "absolutely zero" detrimental effect on the potential market for the copyrighted work and could, "in a perverse way," actually increase its market value. Based on these conclusions, the court held that the challenged use was a "fair use." The court thus denied Bond's motion for a preliminary injunction, and then, based on the undisputed facts, granted summary judgment in favor of the defendants on November 20, 2001.*

When Bond filed a motion to alter or amend the judgment, the district court denied the motion, finding that Bond was again "blurring the distinction between the copyright protection afforded the mode of expression in a written work and the ideas and facts in the public domain which are expressed in the work." The court observed that Bond had not established any likelihood that the defendants intended to utilize the manuscript in any way other than that deemed by the court to be a fair use, and that, in the event they tried to use it for other purposes, they would do so "at the risk of being sued as a wil[l]ful infringer.

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*Counsel for the parties state that at the custody hearing on December 10, 2001, in state court, William Slavin's attorneys in fact introduced the manuscript into evidence.

"Pursuant to motions filed by the defendants, the district court awarded attorneys fees to the individual defendants under 17 U.S.C. § 505, but not to the law-firm defendants because the law firms were representing themselves *pro se*. The court also denied the law-firm defendants' motions for sanctions against Bond pursuant to Federal Rule of Civil Procedure 11.

Bond filed an appeal from the district court's summary judgment entered on November 27, 2001, and the court's subsequent order awarding attorneys fees. The law-firm defendants cross-appealed from the district court's denial of their motions for attorneys fees and for Rule 11 sanctions.

II

Bond contends that the district court adopted a *per se* rule that use of copyrighted material as evidence in a legal proceeding is always a "fair use," "overriding" the analysis for finding "fair use" required by 17 U.S.C. § 107. Acknowledging that the court might be able to find the fair-use doctrine applicable to the use of copyrighted material as evidence, Bond maintains that the court erred in doing so in this case by not considering all of the statutorily prescribed factors.

The defendants note that the district court did in fact consider the factors set forth in § 107 and that the consideration of those factors correctly demonstrated that "the non-commercial use of the manuscript in the child custody litigation did not result in any commercial exploitation of the work or adversely affect its marketability."

The undisputed facts show that the defendants introduced a copy of Bond's copyrighted manuscript into evidence in a state childcustody proceeding to prove that Bond's household would not be a suitable place for the children of Bond's wife. The work, written by Bond and circulated by him in an effort to publish it, describes how Bond, when 17, planned and committed the murder of his father with a hammer, fooled the police about his mental state, used the juvenile system to obtain merely a "slap on the wrist," and recovered the proceeds of his father's estate, all without remorse. In the manuscript, he stated, "I wanted my father's money." The defendants made copies of the manuscript to use its content as evidence in the child-custody litigation, and there is no evidence of any intent to exploit the book's manner of expression for any purpose, commercial or otherwise. Indeed, there is no evidence in the record to indicate that the defendants' use of the manuscript was anything more than the presentation of evidence in a child-custody proceeding to prove the unsuitability of Bond's home as a place for children. Moreover, there is no evidence that this use adversely affected Bond's interests in the copyright.

Applying the four factors stated in 17 U.S.C. § 107, the district court held that the defendants' use of the work fell within the "fair use" exception established in 17 U.S.C. § 107, principally because the "[p]urpose and character of [the defendants'] use has nothing whatsoever to do with any interest that the copyright law was designed to protect. The copyright law was never designed to protect content as distinguished from mode of expression." The court also concluded that "the effect of the [defendants']

use on the potential market for value of the copyrighted work is absolutely zero."

We review the district court's summary judgment *de novo*, applying the same standard that the district court was required by law to apply for granting the motion for summary judgment. *Beverati v. Smith*, 120 F.3d 500, 503 (4th Cir. 1997).

The Copyright Act, enacted on the authority of Article I, § 8, of the Constitution, confers on creators of original works a limited monopoly in their works of authorship to advance an important public purpose. "It is intended to motivate the creative activity of authors and inventors by the provision of a special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired." *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984). The reward to the owner is "a secondary consideration" that serves the primary public purpose of "induc[ing] release to the public of the products of [the author's or artist's] creative genius." *Id.* (quoting *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 158 (1948)); *see also Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 546 (1985).

The copyright "monopoly" — i.e., the "bundle of exclusive rights . . . to publish, copy, and distribute" the work, *Harper & Row*, 471 U.S. at 546-47 — is limited and subject to a list of statutory exceptions, including the exception for fair use provided in 17 U.S.C. § 107. *See* 17 U.S.C. § 106; *Sony*, 464 U.S. at 447. Section 107 provides explicitly that "the fair use of a copyrighted work . . . is not an infringement of copyright."

The fair-use doctrine is a longstanding common-law principle, now codified in § 107, that was "traditionally defined as 'a privilege in others than the owner of the copyright to use the copyrighted material in a reasonable manner without his consent.'" *Harper & Row*, 471 U.S. at 549 (quoting H. Ball, *Law of Copyright and Literary Property* 260 (1944)). The reasonableness of a use is determined on a case-bycase basis applying an "equitable rule of reason analysis." *Sony*, 464 U.S. at 448; *see also Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 577-78 (1994). To guide the determination of whether a particular use is a fair use, § 107 provides that a court must consider four factors among any others relevant:

> (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
>
> (2) the nature of the copyrighted work;
>
> (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
>
> (4) the effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. § 107. These factors are "not meant to be exclusive," *Harper & Row*, 471 U.S. at 560, but rather "illustrative," representing "only general guidance about the sorts of copying that courts and Congress most commonly have found to be fair uses," *Campbell*, 510 U.S. at 577-78. Because a particular use must be examined for its reasonableness in determining whether it is a "fair use," any *per se*

rule is inappropriate. *Id.* at 577 ("The task is not to be simplified with bright-line rules, for the statute, like the doctrine it recognizes, calls for case-by-case analysis"); *id.* at 585 ("The Court of Appeal's elevation of one sentence from *Sony* to a per se rule thus runs as much counter to *Sony* itself as to the long common-law tradition of fair usage adjudication"); *Sundeman v. Seajay Soc'y, Inc.*, 142 F.3d 194, 202 (4th Cir. 1998) (noting that fair use demands a case-by-case inquiry).

A fair-use analysis bears relevance only when a challenged use violates a right protected by the Copyright Act. But the statutorily protected rights are themselves limited in that a copyright does not secure an exclusive right to the use of facts, ideas, or other knowledge. Rather, a copyright gives an author exclusive rights only with respect to his manner of expression. *See, e.g.*, *Baker v. Selden*, 101 U.S. 99, 102 (1879); *Superior Form Builders, Inc. v. Chase Taxidermy Supply Co.*, 74 F.3d 488, 492 (4th Cir. 1996) (noting that "the originality inherent in each author's expression is the essence of the proprietary interest protected"). In *Superior Form Builders*, we noted that even though the Copyright Act will protect even the minimal quantum of originality — "independent creation plus a modicum of creativity," *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 346 (1991) — the public has an interest in retaining in the public domain "the right to discover facts and exchange ideas freely. Thus, copyright protection does not extend to ideas or facts even if such facts were discovered as the product of long and hard work." *Superior Form Builders*, 74 F.3d at 492 (internal citation omitted).

With these general principles of copyright law in hand, we now turn to the question before us of whether the defendants' use of Bond's copyrighted manuscript as evidence in the child-custody proceeding was subject to the fair-use exception defined in § 107. To make that determination, we apply the four factors set forth in § 107.

A

The first § 107 factor directs the inquiry into the "purpose and character of the [defendants'] use, including whether such use is of a commercial nature or is for nonprofit educational purposes." 17 U.S.C. § 107(1). The use of a copyrighted work for a commercial purpose "tends to weigh against a finding" that the challenged use is a "fair use." *Harper & Row*, 471 U.S. at 562. The "crux of the profit/ nonprofit distinction is not whether the sole motive of the use is monetary gain but whether the user stands to profit from exploitation of the copyrighted material without paying the customary price." *Id.* If a challenged use of a copyrighted work is noncommercial, the party alleging infringement must demonstrate "either that the particular use is harmful, or that if it should become widespread, it would adversely affect the potential market for the copyrighted work." *Sony*, 464 U.S. at 451.

Application of this factor weighs heavily against Bond's infringement claim. The defendants' use of Bond's copyrighted manuscript is not for any commercial purpose; the defendants are not seeking to exploit the copyrighted material without paying the customary price. Indeed, the defendants' use is indifferent to Bond's mode of expression. Rather, the narrow purpose of defendants' use of the manuscript

is for the evidentiary value of its content insofar as it contains admissions that Bond may have made against his interest when he bragged about his conduct in murdering his father, in taking advantage of the juvenile justice system, and in benefiting from his father's estate. These are all facts relevant to the custody decision, and their use does not draw on Bond's mode of expression.

Because the challenged use is noncommercial, Bond must demonstrate that the use of the manuscript as evidence in the litigation would harm the potential market for his manuscript. Neither in his brief nor at oral argument has Bond been able to identify any harm or potential harm to his work against which the law of copyrights protects. The only harm that we can discern from his arguments is a claim that he has lost the right to control the release of a "private" or "confidential" document. But at oral argument, he conceded that the document was not confidential. Indeed, it is apparent that Bond has circulated the document in an effort to have it published. But more importantly, the protection of privacy is not a function of the copyright law. *See, e.g., New Era Publications Int'l APS v. Henry Holt & Co.*, 695 F. Supp. 1493, 1504-05 (S.D.N.Y. 1988) (Leval, J.). To the contrary, the copyright law offers a limited monopoly to encourage ultimate *public access* to the creative work of the author. If privacy is the essence of Bond's claim, then his action must lie in some common-law right to privacy, not in the Copyright Act. *See, e.g., Lawrence v. A.S. Abell Co.*, 475 A.2d 448, 450-51 (Md. 1984).

B

We next consider the second factor, "the nature of the copyrighted work." 17 U.S.C. § 107(2). This factor focuses attention on the extent to which a work falls at the core of creative expression. *See Campbell*, 510 U.S. at 586. Thus, for example, a fictional work might be closer to the core of copyright than a factual work. *See, e.g., Stewart v. Abend*, 495 U.S. 207, 237-38 (1990).

That Bond's manuscript is unpublished and contains a stylized mode of expressing his feelings about historical facts weigh against a finding of fair use. *See Harper & Row*, 471 U.S. at 564. But, as *Campbell* instructs, we do not consider the § 107 factors "in isolation, one from another," but we weigh them together "in light of the purposes of copyright." 510 U.S. at 578. Where, as here, the use of the work is not related to its mode of expression but rather to its historical facts and there is no evidence that the use of Bond's manuscript in the state legal proceedings would adversely affect the potential market for the manuscript, one cannot say the incentive for creativity has been diminished in any sense. And because the societal benefit of having all relevant information presented in a judicial proceeding is an important one, it should be furthered if doing so would not unduly undermine the author's rights with regard to his creative work.

C

Under the third § 107 factor, we examine the "amount and substantiality of the portion used in relation to the copyrighted work as a whole." 17 U.S.C. § 107(3). As a general matter, as the amount of the copyrighted material that is used increases,

the likelihood that the use will constitute a "fair use" decreases. But this is an imperfect generalization. *Compare Harper & Row*, 471 U.S. 569 (holding that publication of only some 300 words from unpublished memoirs of President Ford was not a fair use given the quality of the quoted language), *with Campbell*, 510 U.S. at 594 (holding that even qualitatively substantial copying in a parodical song is fair use when such copying serves the necessary function of "conjuring up" the original song to advance the parody). "The extent of permissible copying varies with the purpose and character of the use." *Campbell*, 510 U.S. at 586-87.

It is conceded that the defendants' challenged use of the manuscript in the state-court proceeding involved all, or nearly all, of the copyrighted work. Its use, however, was not for its expressive content, but rather for its allegedly factual content. The sole purpose and intent of introducing Bond's manuscript was to obtain admissions of fact against his interest in an effort to prove that his home would not be a suitable place for custody of children. The use of the copyrighted material in this context, even the entire manuscript, does not undermine the protections granted by the Act but only serves the important societal interest in having evidence before the factfinder. *See Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 526 (1994) ("We have often recognized the monopoly privileges that Congress has authorized, while 'intended to motivate the creative activity of authors and inventors by the provision of a special reward,' are limited in nature and must ultimately serve the public good"). Because the manuscript was not used to undermine any right conferred by the

Copyright Act, Bond can derive little benefit from this factor in the context of this case.

D

Finally, we consider the effect of the defendants' use of Bond's copyrighted manuscript "upon the potential market for or value of the copyrighted work." 17 U.S.C. § 107(4). This factor is "undoubtedly the single most important element of fair use." *Harper & Row*, 471 U.S. at 566. This is so because it touches most closely upon the author's ability to capture the fruits of his labor and hence his incentive to create. Under this core inquiry, we determine whether the defendants' introduction of the manuscript in evidence would materially impair the marketability of the work and whether it would act as a market substitute for it.

On this factor, there is no evidence that the admission into evidence of Bond's manuscript would adversely affect its marketability. Indeed, the district court made the observation: "Ironically, if any- thing, [the defendants' use] increases the value of the work in a perverse way, but it certainly doesn't decrease it."

E

In sum, we conclude that the district court did not err in concluding that the defendants' use of the manuscript as evidence in the state court proceeding fell within the scope of fair use authorized by § 107 of the Copyright Act. To the contrary, we agree with the district court when it stated:

> Purpose and character of [the defendants'] use has nothing whatsoever to do with any interest that the copyright law was designed

> to protect. The copyright law was never designed to protect content as distinguished from mode of expression.
>
> * * *
>
> It was certainly never intended to utilize, to keep from the public the ability to state the facts in a document as compared to the mode of expression.
>
> * * *
>
> [Moreover], the effect of [defendants'] use on the potential market for value of the copyrighted work is absolutely zero.

III

Bond also contends that the district court erred in awarding attorneys fees to the individual defendants as prevailing parties, under 17 U.S.C. § 505. The district court awarded $6,675.45 each to the defendants Dudley Hodgson, Kenneth Blum, Jr., and Kenneth Blum, Sr., and $8,699.70 to William Slavin.

Bond does not contest the amount of the awards, but he argues that the district court's findings on the factors relevant to an award of attorneys fees were not justified. He argues that he was only seeking to protect his rights under the Copyright Act and that his rights should not be chilled by an assessment of attorneys fees. He argues expansively that the question of whether the introduction of a copyrighted work into evidence was a fair use is a close question, particularly when there are no controlling authorities on point.

We review the district court's award of attorneys fees under 17 U.S.C. § 505 for abuse of discretion,

reversing subsidiary factual findings only if they are clearly erroneous. *Diamond Star Bldg. Corp. v. Sussex Co. Builders, Inc.*, 30 F.3d 503, 506 (4th Cir. 1994).

The Copyright Act provides:

> [T]he court in its discretion may allow the recovery of full costs by or against any party. . . . Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

17 U.S.C. § 505. To determine whether an award of attorneys fees should be made to a party under § 505, we have articulated four factors for consideration: "(1) the motivation of the parties, (2) the objective reasonableness of the legal and factual positions advanced, (3) the need in particular circumstances to advance considerations of compensation and deterrence, and (4) any other relevant factor presented." *Diamond Star*, 30 F.3d at 505 (quoting *Rosciszewski v. Arete Assocs., Inc.*, 1 F.3d 225, 234 (4th Cir. 1993) (internal quotation marks omitted)).

In applying these factors to the circumstances before it, the district court found that Bond's motivation in bringing his copyright infringement action was "to block potentially relevant evidence from being presented" in the child custody proceeding. In essence, the court stated that Bond misused the Copyright Act and that he was motivated by a desire to suppress the underlying facts of his copyrighted work rather than to safeguard its creative expression. Assessing the reasonableness of the legal positions advanced by

Bond, the court concluded that the fair-use question presented by Bond's complaint was "not a close one" and that Bond's position was "frivolous," although the court recognized that frivolousness was not essential to an award of attorneys fees. The court concluded that it was unreasonable for Bond to use a copyright infringement action to attempt to bar introduction of facts disclosed in the work as admissions against his interest, particularly when the information was relevant to child custody issues. Finally, the court stated that Bond and others in a position similar to him "should be deterred from bringing meritless actions."

We conclude that the district court, in reaching these conclusions, did not clearly err in its factfinding and, in applying the *Rosciszewski* factors to award attorneys fees to the prevailing individual defendants, did not abuse its discretion.

IV

The two law-firm defendants — McDaniel, Bennett & Griffin and Adelberg, Rudow, Dorf & Hendler, LLC — also sought attorneys fees under 17 U.S.C. § 505, but the district court denied them because it concluded that the firms were acting *pro se* and therefore were not entitled to fees. The law firms cross-appealed, arguing that the district court erred in applying to them the *pro se* exception, as stated in *Kay v. Ehrler*, 499 U.S. 432 (1991) (holding that an attorney representing himself is ineligible for attorneys fees under 42 U.S.C. § 1988).

Because of the absence of judicial precedents and in view of the insight provided by our decision in *Doe v. Board of Education of Baltimore County*, 165 F.3d 260 (4th Cir. 1998) (denying statutory fees to an

attorney-parent of a child with a disability who was a prevailing party under 20 U.S.C. § 1415(i)(3)(B)), the district court believed that it could not award fees under 17 U.S.C. § 505 to a prevailing law firm when members of that law firm represent the firm. The district court held conditionally that if it had been given "discretion to award counsel fees to the law firm defendants, it would do so," but it would have awarded "substantially less than the amount claimed because . . . had there been independent counsel being paid by the law firm Defendants, the matter would have been handled at far less cost than is sought from the Plaintiff."

The law firms contend that the district court erred in concluding that the law firms were proceeding *pro se* and that the cases of *Kay* and *Doe* preclude an award of fees to them under § 505. They state that they are "legal entities represented by attorneys," albeit attorneys within the firm. They argue that the Supreme Court's statement in *Kay* that "an organization is not comparable to a *pro se* litigant" is dispositive on this issue. *Kay*, 499 U.S. at 436 n.7. They argue additionally that Local Rule 101.1(a) of the District of Maryland states that "[o]nly individuals may represent themselves." They maintain that a law firm using members to represent the firm is more analogous to a State or a corporation represented by its own in-house counsel. In each of the situations, they note, the attorney-client relationship is created between the organization and the attorney, just as it was between the law firms and the members representing them.

This is an issue of first impression in our circuit, but its resolution may readily be derived from the

Supreme Court's decision in *Kay* and our decision in *Doe*.

The principle that a *pro se* litigant who is *not* a lawyer is not entitled to attorneys fees authorized by a fee-shifting statute is not disputed. *See, e.g.*, *Gonzales v. Kangas*, 814 F.2d 1411 (9th Cir. 1987); *Smith v. DeBartoli*, 769 F.2d 451 (7th Cir. 1985); *Owens-El v. Robinson*, 694 F.2d 941 (3d Cir. 1982). The question more analogous to the facts before us — whether a *pro se* litigant who is *also* an attorney would be entitled to such fees — was addressed by the Supreme Court in *Kay*. In *Kay*, the Court held that a plaintiff who was also an attorney and who prevailed in a civil rights action was nonetheless not entitled to fees under 42 U.S.C. § 1988(b), which authorizes attorneys fees to the prevailing party, notwithstanding the fact that the attorney "obviously handled his professional responsibilities . . . in a competent manner." 499 U.S. at 435. The Supreme Court rested its conclusion on three principles. First, as a textual matter, it concluded that an "attorney," whose fees would be reimbursable under § 1988, "assumes an agency relationship, and it seems likely that Congress contemplated an attorney-client relationship as a predicate for an award under § 1988." *Id.* at 436. Second, the Court focused on the purpose of fee-shifting statutes "to enable potential plaintiffs to obtain the assistance of competent counsel in vindicating their rights." *Id.* And third, an award of fees to only those litigants who have retained independent counsel ensures "the effective prosecution of meritorious claims." *Id.* at 437. Explaining this more fully, the Court stated:

> Even a skilled lawyer who represents himself is at a disadvantage in contested litigation. Ethical considerations may make it inappropriate for him to appear as a witness. He is deprived of the judgment of an independent third party in framing the theory of the case, evaluating alternative methods of presenting the evidence, cross-examining hostile witnesses, formulating legal arguments, and in making sure that reason, rather than emotion, dictates the proper tactical response to unforeseen developments in the courtroom. The adage that "a lawyer who represents himself has a fool for a client" is the product of years of experience by seasoned litigators.

Id. at 437-38 (footnote omitted).

In *Doe*, we applied the principles of *Kay* to a fee-shifting provision in the Individual with Disabilities Education Act ("IDEA"), denying a parent, who was also an attorney, a right to collect fees under the statute for his representation of his child. 165 F.3d at 265. Even though a parent who was also an attorney was distinct from and therefore an agent for the prevailing child, who would otherwise be entitled to fees under IDEA, 20 U.S.C. § 1415(i)(3)(B), we concluded that "[l]ike attorneys appearing *pro se*, attorney-parents are generally incapable of exercising sufficient independent judgment on behalf of their children to ensure that 'reason, rather than emotion' will dictate the conduct of the litigation." *Id.* at 263 (quoting *Kay*, 499 U.S. at 437). Because a parent-attorney's representation of his child was akin to *pro se* representation, we employed the rationale of *Kay* to find that the

parent-attorney representation of a child in an IDEA case fell within the "special circumstances" exception barring fees where such an award would be unjust. *See Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

But the principles of *Kay* and *Doe*, which were applied to deny a prevailing party attorneys fees under fee-shifting statutes, do not apply in circumstances where entities represent themselves through in-house or *pro bono* counsel. In *Kay*, the Supreme Court explained the distinction: "[A]n organization is not comparable to a *pro se* litigant because the organization is always represented by counsel, whether in-house or *pro bono*, and thus, there is always an attorney-client relationship." 499 U.S. at 436 n.7. When a member of an entity who is also an attorney represents the entity, he is in an attorney client relationship with the entity and, even though interested in the affairs of the entity, he would not be so emotionally involved in the issues of the case so as to distort the rationality and competence that comes from independent representation. Accordingly, a State's own attorneys representing the State may be awarded attorneys fees under a fee-shifting statute. *See Wisconsin v. Hotline Indus., Inc.*, 236 F.3d 363 (7th Cir. 2000). And in-house counsel representing the corporation for whom they work may also be awarded attorneys fees. *See Textor v. Bd. of Regents of Northern Ill. Univ.*, 711 F.2d 1387, 1396 (7th Cir. 1983) ("Defendants chose to hire in-house counsel because that was the most efficient means of handling a large amount of legal work. . . . [F]or every hour in-house counsel spent on this case, defendants lost an hour of legal services that could have been spent on other matters").

Though representation of a law firm by one of its members presents an increased risk of emotional involvement and loss of independence, the law firm still remains a business and professional entity distinct from its members, and the member representing the firm as an entity represents the firm's distinct interests in the agency relationship inherent in the attorney-client relationship. Although a given representation of a law firm by one or more of its members could suffer from a lack of independence, there is no indication in this case of a relationship that tended to distort independent judgment, as existed in *Doe*.

Because the district court indicated that it was inclined to award the law-firm defendants fees, although not all the fees requested, and would have done so but for the *pro se* prohibition, we now remand this case to authorize, but not require, the district court to award § 505 fees if it determines, in its discretion, to do so.

V

The law-firm defendants also contend that the district court erred in denying their motion for sanctions under Federal Rule of Civil Procedure 11. In denying their motion, the district court stated, "It appears well settled that unless a Rule 11 motion is filed in accordance with the 21 day 'safe harbor' warning provision, it cannot be granted." The court, however, did not have the benefit of our decision in *Rector v. Approved Fed. Savings Bank*, 265 F.3d 248 (4th Cir. 2001), which had been decided only shortly before the court ruled. In *Rector*, we held that the safe harbor provision was not jurisdictional and could be waived if not properly asserted.

Without expressing any opinion on how the motion for sanctions should be decided, we remand this issue to the district court for further consideration of the motion, taking into account our decision in *Rector*.

Accordingly, the judgment of the district court is

AFFIRMED IN PART AND VACATED

AND REMANDED IN PART.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND/NORTHERN DIVISION

CIVIL ACTION NO. MJG 01-2600

WILLIAM C. BOND,
Plaintiff,

v.

KENNETH BLUM, SR., ET AL.
Defendants.

Entered: February 7, 2002

MEMORANDUM AND ORDER

The Court has before it Defendant William Slavin's Motion Requesting Attorneys' Fees under 17 U.S.C. § 505, Defendants Kenneth Blum, Sr., Kenneth Blum, Jr., and Dudley F.B. Hodgson's Motion Requesting Attorneys' Fees Pursuant to 17 U.S.C. § 505, for Sanctions, and for Costs, Defendant McDaniel, Bennett & Griffin's Motion for Award of Attorney's Fees and Expenses, Defendant Adelberg, Rudow, Dorf & Hendler, LLC's Motion Requesting Attorney's Fees Under 17 U.S.C. § 505, and the materials submitted relating thereto. The Court finds that a hearing *is* unnecessary.

I BACKGROUND

The underlying facts can be stated briefly. Plaintiff William C. Bond *is* the husband of Alyson Bond (formerly Slavin, nee Blum), a party *in* a child custody dispute pending *in* State Court, Slavin v.

Slavin, Case No. 95249006/CE 201677 (Cir. Ct. Balto. City, Md.) The defendants (or at least some of them) obtained[1] a copy of a manuscript written by Plaintiff entitled "Self Portrait of a Patricide - How I Got Away With Murder." Counsel for Defendant Slavin wished to introduce the manscript in evidence in the custody proceeding.

In the instant case, Plaintiff sought to enforce alleged rights in the manuscript under the federal Copyright Act, in particular he sought to prevent Defendant Slavin (or anyone else) from presenting the manuscript as evidence in the custody dispute. On November 20, 2001, the Court heard argument and stated an oral decision on the record of proceedings holding that the use of the manuscript as an exhibit in the custody litigation would constitute a fair use of the work and that Defendants had not violated any copyright rights of the Plaintiff in the manuscript. Because of the obviousness of the substantive question presented, the Court did not reach the Defendants' contention that the Plaintiff had not properly effected a copyright registration of the manuscript.

By the instant motion, Defendants seek to recover their respective counsel fees pursuant to 17 U.S.C. § 505.

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[1] Defendant Hodgson, a private investigator, was given a copy of the manuscript by the widow of an attorney, which attorney had been acting in a non-lawyer capacity to try to find a publisher for the work.

II. DISCUSSION

A. The Pertinent Factors

The Copyright Act, 17 U.S.C. § 505 provides that:

> the court in *its* discretion may allow the recovery of full costs by or against any party. . Except as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

In Diamond Star Bldg. Corp. v. Freed, 30 F.3d 503 (4th Cir. 1994) the Fourth Circuit held that attorney's fees and costs need not be awarded as a matter of course under § 505. Rather the trial court must exercise *its* discretion in light of appropriate factors. As stated in Diamond Star:

> In Rosciszewski v. Arete Assocs., Inc., [1 F.3d 225, (4th Cir. 1993)] this court adopted the following factors to *guide* a district court in determining whether to award attorney's fees and costs to a prevailing party under § 505: (1) "the motivation of the parties," (2) "the objective reasonableness of the legal and factual positions advanced," (3) "'the need in particular circumstances to advance considerations of compensation and deterrence,'" and (4) "any other relevant factor presented."

Diamond Star at 505.

B. Application of the Factors

1. Motivation

As to the first factor - the motivation of the party from whom an award of attorney's fees and costs is sought - the Court finds the Plaintiff was seeking to

block potentially relevant evidence from being presented in the state custody proceeding. There was no showing that the Plaintiff had any interest in using the copyright laws to facilitate the publication of the work. Rather, the precise opposite is the case. Plaintiff sought to use the copyright law to prevent the dissemination of the work and, also, to create a form of suppression of the facts, not the protectable mode of expression. Plaintiff by no means had a motivation faithful to the purpose of the Copyright Act. Therefore, the first factor favors the Defendants.

2. Reasonableness

The second factor, the objective reasonableness of the parties' contentions, strongly favors the Defendants. The central issue in the case, the issue reached only after peeling away the irrelevant and immaterial, was whether the introduction of a copyright protected work in evidence in litigation constituted "fair use" under the copyright law. This question was not a close one. It is well established that such use is "fair use". Although it is not necessary to find that the Plaintiff's position was frivolous to make a § 505 award, the Court finds that it was. The instant case should not have been brought in federal court as a purported copyright action.

3. Need for Compensation

The third factor, which the Fourth Circuit has characterized as "the need for compensation"[2] , and as relating to the goal of deterring a party from pursuing frivolous litigation, favors the Defendants. Potential copyright Plaintiffs should be deterred

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[2] Diamond Star at 506.

from bringing meritless actions, such as the instant case, by concerns that they may have to pay the legal fees of the Defendants.

4. Other Factors

The fourth, "catch all " factor, labelled "any other relevant factor," is viewed differently with respect to the individual and law firm Defendants.

a. The Individual Defendants

Defendant Hodgson, the private investigator, obtained a copy of the manuscript from the widow of the person who had assisted Plaintiff in trying to find a publisher. To the extent that Plaintiff may have had some claim that Defendant Hodgson wrongfully obtained the physical copy of the manuscript, such a claim[3] was by no means based on the copyright law. There is no "other factor" weighing against a § 505 award to Defendant Hodgson. He shall be granted such an award.

Kenneth Blum, Jr. is the son of Kenneth Blum, Sr. There appears no reason why he was made a party to the case. Nor is there any "other factor" weighing against § 505 award to Defendant Kenneth Blum, Jr. He shall be granted such an award.

Defendant Kenneth Blum, Sr. is the grandfather of the children involved in the custody dispute. He has taken an active interest in that case and provides financial support for the benefit of William Slavin's side of the case. The only "other factor" weighing against a § 505 award to Defendant Kenneth Blum, Sr. lies in his substantial wealth.

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[3] The Court does not suggest that there was any viable claim of this type.

But, the award to him is not substantial and serves the need for deterrence to Plaintiff and others similarly situated. The court does not find this factor sufficient to overcome the factors weighing in favor of a § 505 award. A § 505 award shall be granted to Kenneth Blum, Sr.

Defendant William Slavin, a party in the custody litigation appears to have had no active part in the obtention or use of the manuscript. Presumably, he was a defendant because his counsel (acting for him) was planning to introduce the manuscript in evidence in the custody proceeding. There is no "other factor" weighing against a § 505 award to Defendant William Slavin. Such an award shall be made.

Plaintiff has presented no objection to the amount of fees and costs claimed by the individual Defendants. The Court has reviewed the evidence submitted and finds the fees and costs reasonable. Accordingly, the individual Defendants shall be awarded the claimed fees and costs under 17 U.S.C. § 505.[4]

b. The Law Firm Defendants

The question of whether a §505 award of legal fees can be made to lawyers representing themselves is a question of first impression.

In Kay v. Ehrler, 499 U.S. 432 (1991) the Supreme Court held, in a case arising under 42 U.S.C. § 1988, that an attorney representing himself

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[4] Of course, the individual Defendants cannot recover for the same costs both as part of the § 505 award and as part of the award of assessable costs. They must insure that any petition for assessable costs excludes duplication.

could not be granted an award of counsel fees. As stated therein:

> A rule that authorizes awards of counsel fees to pro se litigants - even if limited to those who are members of the bar - would create a disincentive to employ counsel whenever such a plaintiff considered himself competent to litigate on his own behalf. The statutory policy of furthering the successful prosecution of meritorious claims is better served by a rule that creates an incentive to retain counsel in every such case.

Id. at 438

In McNeil v. United States, 508 U.S. 106, (1993) the Court noted, albeit in a context other than a fee award, that

> "we have previously recognized a systemic interest in having a party represented by independent counsel even when the party is a lawyer. See Kay v. Ehrler, 499 U.S. 432 (1991)."

Id. at 113, n. 10.

It appears beyond debate that, in the instant case, the law firms represented by their own employees, partners or members were proceeding pro se and not represented by independent counsel. Compare, Burka v. U.S. Dept. of Health and Human Services, 142 F.3d 1286 (D.C. Cir. 1998).

The Court has found no judicial decision which has considered the Kay holding relating to aw award of fees to pro se counsel in a copyright case. The Fourth Circuit, in Doe v. Bd. of Educ. of Balto. County, 165 F.3d 260 (4th Cir. 1998) considered Kay

in a case in which an attorney sought an award of legal fees for representing his child in a case arising under the Individual with Disabilities Education Act, 20 U.S.C. § 1400-1487. The Fourth Circuit held that

> although an attorney-parent's representation of his child is not pro se representation, such that Kay is not on "all fours" with this case, much of the rationale articulated in Kay does apply here. That rationale provides a clear basis for invoking the judicially created special circumstances doctrine. In the context of other fee-shifting provisions, *e.g.*, those in 42 U.S.C. § 1988 and Title VII of the Civil Rights Act of 1964, the Supreme Court has recognized that although a prevailing party "should ordinarily recover an attorney's fee," "special circumstances" can render "such an award unjust."
>
> * * *
>
> Courts have universally recognized that this "special circumstances" exception is very "narrowly limited."
>
> * * *
>
> However, given a parent's special and close relationship with his or her child, we believe that Kay does provide a basis for invoking the narrow special circumstances exception here.

Doe at 264.

In Kooritzky v. Herman, 178 F.3d 1315 (D.C. Cir. 1999) the District of Columbia Circuit held that a district court had erred in awarding fees to a pro se litigant under the Equal Access to Justice Act, 28

U.S.C.A. 2412(d)(1)(A). Moreover the Court stated that its decision in Burka "reflects a conviction that nothing in the Supreme Court's Kay opinion limits its reasoning to the specific facts or statute before it." See also the Tax Court pre-Kay decision in Minahan v. Comm'r, 88 T.C. 516 (1987) in which the court held that a member of a law firm who had paid his own firm for his services could not recover legalfees from the I.R.S. under 26 U.S.C. § 7430. Interestingly, the Tax Court stated that "lost opportunity costs are not fees paid or incurred for the service of an attorney within the meaning of section 7430." Id. at 519.

In view of the current state of the law including such insights into the views of the Fourth Circuit as are afforded by the decision in Doe, the Court will not grant a § 505 award to the law firm Defendants. The Court predicts that, when faced with the issue, as it likely will be in the instant case which is already pending on appeal, the Fourth Circuit will hold that it would have been an abuse of discretion to award legal fees to the law firm Defendants.

The Court will state, for the benefit of the appellate court, that had discretion to award counsel fees to the law firm Defendants, it would do so. However, the award would be substantially less than the amount claimed because, consistent with what this Court finds to be an essential part of the Kay rationale, had there been independent counsel being paid by the law firm Defendants, the matter would have been handled at far less cost than is sought from the Plaintiff.

III. CONCLUSION

For the foregoing reasons:

1. Defendant William Slavin's Motion Requesting Attorneys' Fees Under 17 U.S.C. § 505 is GRANTED. He shall be awarded the claimed amount of $8,699.70.

2. Defendants Kenneth Blum, Sr., Kenneth Blum, Jr., and Dudley F.B. Hodgson's Motion Requesting Attorneys' Fees Pursuant to 17 U.S.C. § 505, for Sanctions, and for Costs is GRANTED. They shall each be awarded the claimed amount of $6,675.45.

3. Defendant McDaniel, Bennett & Griffin's Motion for Award of Attorney's Fees and Expenses is DENIED.

4. Defendant Adelberg, Rudow, Dorf & Hendler, LLC's Motion Requesting Attorney's Fees Under 17 U.S.C. § 505 is DENIED.

6. All defendants have been awarded their respective assessable costs as stated in the Judgment Order issued November 26, 2001; however, there shall be no duplication of assessable costs and costs included in the §505 awards being made by this Order.

7. The defendants granted an award under 17 U.S.C. § 505 shall exclude from their assessable costs all costs included in their respective § 505 awards.

8. A Supplemental Judgment Order shall be issued.

SO ORDERED this 6th day of February, 2002.

/s/
Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM C. BOND,	*
Plaintiff	*
vs.	*
KENNETH BLUM, SR., *et al.*,	*
Defendants	*

CA-MJG-01-2660

Entered: January 4, 2002

On Motion to Alter or Amend Judgment and
Amended Motion to Alter or Amend Judgment

MEMORANDUM AND ORDER

The Court has before it Plaintiff's Motion to Alter or Amend Judgment, Plaintiff's Amended Motion to Alter or Amend Judgment and the materials submitted relating thereto. The Court finds that a hearing is unnecessary.

Plaintiff is determined to blur the distinction between the copyright protection afforded the mode of expression in a written work and the ideas and facts in the public domain which are expressed in the work. As noted in the Court's oral opinion, a party to litigation is making fair use of a document protected by copyright when presenting the document as relevant evidence in a legal proceeding. The Defendants did not violate any copyright interest the Plaintiff had in the manuscript at issue

by their use of the document in the custody proceeding or in the instant case.

Plaintiff did not establish prior to Judgment, and has not now established, any likelihood that Defendants will utilize the manuscript other than in a manner held by this Court to constitute fair use.

It is, of course, theoretically possible that the Defendants, or anyone else for that matter, could seek to use the manuscript other than in the custody proceedings[1]. Should any Defendant do so, that Defendant would do so at the risk of being sued as a wilful infringer who could be liable for substantial statutory damages. Of course, in any such lawsuit certain serious issues not here addressed, for example the adequacy of the copyright registration, would have to be resolved.

Whatever the future may hold in regard to the parties to the instant case, the Court finds no reason to believe that the Defendants intend to, or would have any reason to, make any use, other than fair use in litigation, of the manuscript at issue.

For the foregoing reasons:

Plaintiff's Motion to Alter or Amend Judgment is DENIED.

1. Plaintiff's Amended Motion to Alter or Amend Judgment is DENIED.

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[1]Including, of course, any appeals and related judicial proceedings.

SO ORDERED this 27th day of December, 2001.

/s/
Marvin J. Garbis
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND/NORTHERN DIVISION

WILLIAM C. BOND,
Plaintiff,

v.

KENNETH BLUM, SR., ET AL.
Defendants.

Baltimore, Maryland
Civil Action No. MJG 01-2600
November 20, 2001

REPORTER'S OFFICIAL TRANSCRIPT
OF PROCEEDINGS
(TR. 363-367)

BEFORE:

THE HONORABLE MARVIN J. GARBIS

Entered November 20, 2001

OPINION

THE COURT: All right. Let me get to the bottom line. I understand there's a lot at stake here, and we have, you know, a dispute that's far beyond this copyright dispute, but I've got to deal with this in a copyright matter.

I think that the facts are -- the relevant facts are really not debatable, and I'm going to just -- I'm doing this off the top of my head. If somebody wants to appeal, I'm going to have to write it up. I think it's just not very complex.

There was some incident in Mr. Bond's life in which he was accused and pleaded to a crime in Ohio. He was represented by Gerald Messerman, an extremely fine lawyer, with whom I had the privilege of going to law school and actually practiced in law with Mr. Messerman, so he was certainly represented by as good a lawyer as you'll find in Ohio or wherever else, present company perhaps excluded and perhaps not.

Whatever it was, he came to Baltimore. This relationship started with a person who's now Mrs. Bond. There's a custody battle, all of which we get involved with.

He had written up a manuscript, which was a version, but be it fiction or real or something in between is not here to be determined, because in fact he wrote it or wrote most of it, so that's not an issue.

He went to a lawyer named Mr. Pessin and some others, and he tried to get it published. It's obvious, nobody's making any serious contention Mr. Pessin was acting in part as a literary agent, was sending it out to people. There's letters.

The one letter that he wrote to one person, I mean, I haven't heard the arguments, but I'll wait to hear the arguments, he was talking about his participating together with other people in the promotion of a book. He was obviously going to be a

partner in the book. That's fine. Whatever it works out, works out.

The book ends up as -- and on the facts it end up in Mr. Pessin's house. It's not part of his legal practice, because he wasn't doing this as a lawyer, and the copy is either going to be thrown out, but it's given to Mr. Hodgson, and we can make some debate as to who owns that copy, but that's really different from analyzing the copyright.

This is not a confidential document in any kind of privileged sense. And, in any event, Mr. Hodgson did not steal it. Mr. Hodgson got the document from somebody who had control of that copy, who appeared to be legally entitled to do so, and gave it to him. I'm not casting any stones at him.

The defendants got it, and with regard to a judicial proceeding, we get into 107. Also it was given to the police. One can make an argument, but an argument can be made with regard to whether giving it to the police is the equivalent of using it in a judicial proceeding. I say that that's not relevant for a lot of reasons.

The primary reason is that I'm not here concerned with what I am going to do with suppressing the police's acquisition of this document on copyright grounds, but I would find that even giving it to the police is the same thing. We look at 107. There's a body of precedence that says that the use of a work, even the entire work, in litigation, is fair use.

Yes, we have to look at all four aspects of it. I look at the purpose and character of the use. Purpose and character of this use has nothing whatsoever to do

with any interest that the copyright law was designed to protect. The copyright law was never designed to protect content as distinguished from mode of expression.

It was never intended to protect what is said as compared to how you say it. It was certainly never intended to utilize, to keep from the public the ability to state the facts in a document as compared to the mode of expression.

The purpose and the character of the use here has nothing to do with the mode of expression. It has to do with the content.

So the nature of the copyrighted work is a copyrightable manuscript, and I don't see where the cuts it. It's a perfectly fine manuscript.

The amount, substantiality of the portion used in relation to the copyright work as a whole is entirely used as a whole, which would be the most positive factor for the plaintiff, but the effect of the use on the potential market for value of the copyrighted work is absolutely zero.

Ironically, if anything, it increases the value of the work in a perverse way, but it certainly doesn't decrease it. I find very persuasive the cases without exception, without meaningful exception, that you can use a copyrighted document in evidence, and that's fair use.

So with that, I think that's where we are. And I think it makes life simple. I'm going to deny the preliminary injunction. I'm going to grant summary judgment to all the defendants without costs.

But, again, if somebody -- you know, if you want to appeal or want to have further proceedings in this

case, you're free to file for reconsideration on the summary judgment.

I'm not here to rush things along, but I think I've got the key point in this case, and everything else is just churning. With that, I think we can adjourn.

/s/
Marvin J. Garbis
United States District Judge